

16

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

No. 283.

INDIAN TERRITORY ILLUMINATING OIL COMPANY,
PLAINTIFF IN ERROR,

vs.

THE STATE OF OKLAHOMA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OKLAHOMA.

FILED NOVEMBER 13, 1914.

(24,438)

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Return of Writ.

UNITED STATES OF AMERICA,

Supreme Court of Oklahoma, ss:

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the complete record and proceedings in the within entitled case, with all things concerning the same.

In witness whereof, I hereunto subscribe my name, and affix the seal of said Supreme Court of Oklahoma, in the City of Oklahoma City, this 2d day of November, 1914.

[Seal Supreme Court, State of Oklahoma.]

W. H. L. CAMPBELL,

Clerk Supreme Court of Oklahoma,

By JESSIE PARDOE, *Deputy.*

Costs in Supreme Court of Oklahoma.....	\$69.75
Cost of transcript, etc., on appeal.....	69.00

\$138.75

All costs in Supreme Court paid by Plff. Ind. Ty. Ill. Oil Co.

Filed Oct. 13, 1914. W. H. L. Campbell, Clerk.

Citation.

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to the State of Oklahoma,
Greeting:

You are hereby cited and admonished to be and appear at and before the Supreme Court of the United States at Washington, D. C., within thirty days from the date hereof, pursuant to a writ of error filed in the office of the clerk of the Supreme Court of the State of Oklahoma, in the case of in re Indian Territory Illuminating Oil Company to show cause, if any there be, why the judgment rendered against the said Indian Territory Illuminating Oil Company, Plaintiff in Error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Chief Justice of the Supreme Court of the State of Oklahoma, this 12th day of October, 1914.

M. J. KANE,

Chief Justice Supreme Court of Oklahoma.

[Seal Supreme Court, State of Oklahoma.]

Attest:

W. H. L. CAMPBELL,

Clerk Supreme Court of Oklahoma,

By JESSIE PARDOE, *Deputy.*

INDIAN TERRITORY ILLUMINATING OIL COMPANY VS.

OKLAHOMA CITY, OKLAHOMA, October Twelfth, 1914.

I, attorney of record for the defendant in error in the above entitled case, hereby acknowledge due service of the above citation, and enter an appearance in the Supreme Court of the United States.

CHAS. WEST,
Attorney General of the State of Oklahoma.

3 Filed Oct. 13, 1914. W. H. L. Campbell, Clerk.

Supreme Court of State of Oklahoma.

3240.

In the Matter of the Assessment of Indian Territory Illuminating Oil Company,

Petition for Writ of Error.

Considering itself aggrieved by the final decision of the Supreme Court in rendering judgment against it in the above entitled case, the defendant hereby prays a Writ of Error, from the said decision and judgment, to the United States Supreme Court, and an order fixing the amount of a supersedeas bond.

Assignment of errors herewith.

JOHN H. BRENNAN,
Attorney for Defendant,
Bartlesville, Okla.

STATE OF OKLAHOMA,
Supreme Court, ss:

Let the Writ of Error issue upon the execution of a bond by Indian Territory Illuminating Oil Company to the State of Oklahoma, in the sum of 25,000.00 Dollars; such bond when approved to act as a supersedeas.

Dated October 12th, 1914.

M. J. KANE,
Chief Justice Supreme Court of Oklahoma.

[Seal Supreme Court, State of Oklahoma.]

Attest:

W. H. L. CAMPBELL, *Clerk,*
By JESSIE PARDOE, *Deputy.*

4 Filed Oct. 13, 1914. W. H. L. Campbell, Clerk.

In the Supreme Court of the State of Oklahoma.

3240.

In the Matter of the Assessment of Indian Territory Illuminating Oil Company.

Appeal from Decision of State Board of Equalization.

Assignment of Errors and Prayer for Reversal.

Now comes the above named Indian Territory Illuminating Oil Company and files herewith its petition for Writ of Error and says there are errors in the record and proceedings of the above entitled case, and for the purpose of having the same reviewed in the United State Supreme Court, makes the following assignment:

In the above entitled cause the Supreme Court of Oklahoma filed two opinions. The first one was handed down and dated March 10, 1914. A motion for a rehearing was made in said cause,

5 and the second opinion was filed by said court June 9, 1914.

In and by the second opinion of said court the first opinion thereof was modified.

That before the State Board of Equalization of the State of Oklahoma, in the first instance, the said Indian Territory Illuminating Oil Company objected to the taxation of its license, lease, business or privilege granted to it by the United States Government, separate from the taxation of its physical property.

That in the notice of appeal to the Supreme Court of the State of Oklahoma, said Indian Territory Illuminating Oil Company further protested, and as grounds for said appeal, alleged:

"That said arbitrary, unjust and erroneous action of said Board, in so assessing the valuation of said Company's property for the purpose of taxation in the State of Oklahoma will, if allowed to stand, greatly and unfairly increase the burden of taxation resting upon said Company, and will deprive it of its property without due process of law, contrary to the provisions of Section 1 of Article 14 of the Constitution of the United States, and Section 7 of Article 2 of the Constitution of the State of Oklahoma, and will deprive it of the equal protection of the laws, contrary to the provisions of Section 1 of Article 14 of the Constitution of the United States."

That as further grounds of said appeal said Indian Territory Illuminating Oil Company set forth specifically the nature of its said lease and its said business in the Osage Reservation, and asserted that any attempt to tax said Company's franchise or right to do business and operate under said lease was an attempt to tax a right granted by the Federal Government and is illegal and void, and, further, that any attempt to tax this Company's operations in

6 the Indian Reservation was an illegal burden by the State of Oklahoma upon commerce with an Indian Tribe, contrary to the provisions of Section 8 of Article 1 of the Constitution of the United States.

That in the petition for appeal to the Supreme Court of Oklahoma it was again specifically alleged and set forth that the action of the State Board of Equalization of the State of Oklahoma was illegal and void as depriving the Company of its property without due process of law, contrary to the provisions of Section 1 of Article 14 of the Constitution of the United States and would deprive it of the equal protection of the laws, contrary to the provisions of Section 1 of Article 14 of the Constitution of the United States and result in imposing an illegal burden by the State of Oklahoma upon commerce with an Indian Tribe contrary to the provisions of Section 8 of Article 1 of the Constitution of the United States.

That after the second opinion was handed down by the Supreme Court of the State of Oklahoma the Indian Territory Illuminating Company filed its petition for a rehearing, modification of said opinion and a reversal thereof on the grounds which were created by and apparent on the face of said second opinion, wherein and whereby the said Supreme Court of the State of Oklahoma, in said opinion, denied the said Company the equal protection of the laws afforded to it by Section 1 of Article 14 of the Constitution of the United States.

7 First. The Supreme Court of the State of Oklahoma erred in holding and deciding in its first opinion that a statute of the state which authorizes and directs the levy of an ad valorem tax upon an oil and gas mining lease from the Osage Tribe of Indians, approved by the Secretary of the Interior and extended by an act of Congress upon lands of such tribe of Indians is not void upon the grounds that the lessee or his grantee is a federal agent or upon the ground that such tax is a direct burden upon or interference with the power of Congress to regulate commerce with the Indian Tribes.

Second. The Supreme Court of the State of Oklahoma erred in holding and deciding that the Indian Territory Illuminating Oil Company was not a federal agency as follows in its opinion:

"Primarily this Company is not a federal agency. It is a corporation for profit, incorporated under the laws of the State of New Jersey, and doing business in the State of Oklahoma, with whom the Federal Government finds it convenient or profitable to deal in carrying out its policy toward the Osage Tribe of Indians. What the state is attempting to do is to tax property of this corporation within its borders. This certainly is a proper exercise of the taxing power of the state. Borrowing the language of Mr. Justice Holmes, in *Baltimore Shipbuilding Company vs. Baltimore*, 195 U. S. 375, 'it seems to us extravagant to say that an independent private corporation for gain, created by a state, is exempt from state taxation, either in its corporate person, or its property, because it is employed by the United States, even if the work for which it is employed is important and takes much of its time.'"

Third. The Supreme Court of the State of Oklahoma erred in holding and deciding that the action of the State Board of Assessors in assessing the lease, rights and privileges granted to the Indian Territory Illuminating Oil Company by the Osage Tribe of Indians, and renewed by Act of Congress, was not in violation of Section 1 of Article 14 of the Constitution of the United States

8 as depriving it of its property without due process of law.

Fourth. The Supreme Court of the State of Oklahoma erred in holding and deciding that the said action of the State Board of Equalization of the State of Oklahoma did not deprive the Indian Territory Illuminating Oil Company of the equal protection of the law, contrary to the provisions of Section 1 of Article 14 of the Constitution of the United States.

Fifth. The Supreme Court of Oklahoma erred in holding and deciding that the action of the State Board of Assessors in so assessing the said privileges, business and license of the Indian Territory Illuminating Oil Company did not impose an illegal burden upon said Company, and upon commerce with an Indian Tribe contrary to the provisions of Section 8 of Article 1 of the Constitution of the United States.

Sixth. The Supreme Court of the State of Oklahoma erred in holding and deciding that the Indian Territory Illuminating Oil Company was lawfully taxed by the State Board of Equalization, notwithstanding a similar tax could be imposed upon all other like companies in Oklahoma, nor individuals or upon their oil and gas lease holdings, and thereby, in the opinion itself, separate from any other consideration, depriving the Indian Territory Illuminating Oil Company of the equal protection of the law contrary to the provisions of Section 1 of Article 14 of the Constitution of the United States.

9 Seventh. That if, in any view of the opinion of the court, the said court upheld said assessment of the State Board of Equalization as being an assessment against the Capital Stock of said Indian Territory Illuminating Oil Company, then, and in that case, the said court erred in so holding and deciding, because there was no proof that said Company had any stock assessable, and Capital Stock is not assessable to other companies under the laws of the said State of Oklahoma, and that thereby the said State of Oklahoma denies to the Indian Territory Illuminating Oil Company the equal protection of the laws contrary to the provisions of Section 1 of Article 14 of the Constitution of the United States, and that in any event said decision of said court is error because said Capital Stock embraces the value of the very lease held not to be taxable by the Supreme Court in said decision.

Eighth. The Supreme Court of the State of Oklahoma erred in denying the motion of said Company for a re-hearing and modification of the court's opinion of June 9, 1914, wherein and whereby the attention of said court was called to the fact, as a basis for the petition, that the said decision of said court in effect compelled this company to pay on the valuation of its oil leases while the other oil companies and individuals in particular were exempted there-

from, contrary to Section 1 of Article 14 of the Constitution of the United States, and thus, by the effect of said opinion, denied said Indian Territory Illuminating Oil Company the equal protection of the laws in the State of Oklahoma.

For which errors the defendant Indian Territory Illuminating Oil Company prays the said judgment of the Supreme Court of the State of Oklahoma, dated the June 9, 1914, be reversed, and a judgment rendered in favor of said Indian Territory Illuminating Oil Company, and for costs.

INDIAN TERRITORY ILLUMINATING OIL COMPANY.

By JOHN H. BRENNAN,

*Attorney for Indian Territory
Illuminating Oil Company.*

11 Filed Oct. 13, 1914. W. H. L. Campbell, Clerk.

Writ of Error.

UNITED STATES OF AMERICA:

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Oklahoma.
Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the cause of In re Assessment of Indian Territory Illuminating Oil Company, a corporation, wherein was drawn in question the validity of a statute and an authority exercised under said state, on the ground of their being repugnant to the Constitution, treaties and laws of the United States, and the decision was in favor of their validity, and wherein was drawn in question the construction of certain sections of the Constitution of the United States, a statute thereof, and a commission held under the United States, and the decision was against the title, right, privilege or exemption specially set up and claimed under said sections of the Constitution of the United States, and statute and commission thereof; a manifest error hath happened, to the great damage of the said Indian Territory Illuminating Oil Company, as by its complaint appears. We being willing that error, if

12 any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be

done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Edward Douglass White, Chief Justice of the United States, the 12th day of October, in the year of our Lord one thousand nine hundred and fourteen.

ARNOLD C. DOLDE,
*Clerk Circuit Court of United
States, District of Oklahoma.*

[Seal of the United States District Court, Western District of Oklahoma.]

Allowed: October 12, 1914.

M. J. KANE,
*Chief Justice Supreme
Court of Oklahoma.*

13 Filed Oct. 20, 1914. W. H. L. Campbell, Clerk.

In the Matter of the Assessment of the Indian Territory Illuminating Oil Company.

Bond.

Know all men by these presents: That we, Indian Territory Illuminating Oil Company, as Principal, and Southwestern Surety Insurance Company, of Denison, Oklahoma, as Surety, are held and firmly bound unto the State of Oklahoma in the sum of Twenty-five thousand dollars (\$25,000.00) to be paid to said State of Oklahoma, to which payment, well and truly to be made, we bind ourselves jointly and severally, firmly by these presents.

Sealed with our seals, and dated this 16th day of October, 1914.

Whereas, The above named Plaintiff in Error has appealed to the United States Supreme Court to reverse the judgment rendered in the above entitled action by the Supreme Court of the State of Oklahoma.

Now, therefore, the condition of the obligation is such, that if the above named Plaintiff in Error shall prosecute its said Writ of Error to effect, and answer all costs and damages that may be adjudged if it shall fail to make good its plea, then this obligation to be void; otherwise to remain in full force and effect.

INDIAN TERRITORY ILLUMINATING COMPANY.

By H. V. FOSTIV, *Its President.*

[SEAL.]

Attest:

THOS. F. GERMAN,

A Secretary.

[SEAL.]

SOUTHWESTERN SURETY INSURANCE COMPANY.

By M. L. BRAGDON, *Attorney in Fact.*

Bond approved and to operate as supersedeas. Dated October 18, 1914.

M. J. KANE,
Chief Justice Supreme Court of Oklahoma.

14 (Filed Oct. 31, 1911. W. H. L. Campbell, Clerk.)

In the Supreme Court of the State of Oklahoma.

3240.

In the Matter of the Assessment of the Indian Territory Illuminating Oil Company.

*Petition and Record of the Indian Territory Illuminating Oil Co.
on Appeal.*

John H. Brennan, Bartlesville, Okla.; Harris & Nowlin, Kenneth C. Crain, Oklahoma City, Okla., Attorneys for Petitioner.

15 (Filed Oct. 31, 1911. W. H. L. Campbell, Clerk.)

In the Supreme Court of the State of Oklahoma.

No. 3240.

In the Matter of the Assessment of The Indian Territory Illuminating Oil Company.

Petition.

Now comes the Indian Territory Illuminating Oil Company, and for its petition to this Honorable Court in the matter of its appeal from the assessment and valuation of its taxable property for the fiscal year ending June 30, 1912, by the State Board of Equalization of Oklahoma, alleges and says:

I. That petitioner is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, duly authorized to do business in the State of Oklahoma, and having its principal office and all of its business and property in the State of Oklahoma.

II. That heretofore, to-wit, on the 22d day of March, 1911, your petitioner duly filed with the State Auditor of the State of Oklahoma, as provided by law, a return and schedule of the amount and value of its property in the State of Oklahoma subject to taxation, for the information of the State Board of Equalization in making its assessment of the property of your petitioner, as provided by law; a copy of said return being included in the record herewith.

16 III. That thereafter, to-wit, on the 30th day of August, 1911, the State Board of Equalization, being regularly in session for the purpose of making assessment of the valuation of the taxable property of public service corporations, according

to law, did arbitrarily and recklessly, and without any evidence to support its action in that regard, and in direct conflict with all the evidence submitted before said Board, and in conflict with and disregard of the showing made of the value of petitioner's property in said schedule and return thereof, increase and fix the valuation of your petitioner's property for the purpose of taxation from the amount sworn to in said return, to-wit, \$53,835.10, the same being the actual fair cash value of said property, to \$538,350.00; said valuation being therefore \$484,514.90, or nine hundred per cent, in excess of the fair cash value of said property; that thereafter, and on the 2d day of October, 1911, your petitioner, by its attorneys, appeared before said Board for the purpose of obtaining a modification of said assessment, or a dismissal thereof, for the reason that your petitioner claimed, and still claims, that it is not a public service corporation and is therefore not subject to assessment by said Board; but that said Board failed, neglected and refused, and still fails, neglects and refuses, to modify, reduce or correct said erroneous unfair, unreasonable and arbitrary assessment, by reducing the same to the fair cash value thereof, as set forth in said return, or to dismiss the same, or to make any further order or ruling in the premises.

IV. That thereafter, and on the 26th day of October, 1911, said Board being still in session, your petitioner, feeling aggrieved, did file with the Secretary of State of the State of Oklahoma, and with the State Auditor of the State of Oklahoma, Ex Officio Secretary of said Board, notice of its appeal to this Court from the said action of said Board, setting forth in said notices in full the grounds for its appeal, as required by law; a copy of said notice, with acknowledgements of the service thereof duly certified by said officers under their respective seals, being hereto attached as a part of the record herein.

V. That on the same day your petitioner made written demand of the said Board of Equalization, by its said Secretary, for a transcript of the record in the matter of your petitioner's assessment, including a complete record of the returns, evidence, pleadings, exhibits and statements filed, heard, introduced or considered before the said Board or in said Secretary's office relating to your petitioner's assessment, and of all orders, motions, rulings and proceedings of the said Board in connection with said assessment; and that on the 30th day of October, 1911, Hon. Leo Meyer, State Auditor of the State of Oklahoma, and Ex Officio Secretary of the said State Board of Equalization of said State, did make, execute and certify a transcript of all of said proceedings, pleadings, exhibits, statements, reports, returns, and of the oral and written testimony filed, heard, introduced or considered by and before the said Board of Equalization or in the office of the said Auditor of the State of Oklahoma relating to the assessment of your petitioner's property by said Board for the fiscal year ending June 30, 1912; and that said transcript, duly certified by the State Auditor of Oklahoma as aforesaid, with the seal of his office thereto affixed, together with a copy of the notice of appeal served on the Secretary of State of the State of Okla-

homa and on the said State Auditor, as Secretary of said Board of Equalization, as aforesaid, and duly certified and acknowledged by said officials, with their respective seals attached, and a copy of the request for a record made by your petitioner, as aforesaid, with receipt of a copy thereof duly acknowledged by the said Secretary of the Board, is hereto attached, marked Exhibit A, and is here referred to and made a part of this petition, as the record in this cause.

VI. That in the consideration and making of the assessment and valuation of your petitioner's property for the purpose of taxation, and in failing, neglecting and refusing to modify, correct, reduce or dismiss said assessment, the State Board of Equalization committed certain errors to the prejudice of your petitioner, the Indian Territory Illuminating Oil Company, in the following particulars, to-wit:

First. That said company had before the making of said assessment and valuation, and as required by law, filed in the office of the Auditor of the State of Oklahoma its duly verified return of its taxable property, showing the actual fair and true cash value thereof as \$53,835.10; that said sum represents and did represent the actual fair cash value of the taxable property of said company as of the first day of February, 1911; and that the value of said taxable property has not increased since said date, but has rather decreased; and, further, that on the 18th day of April, 1911, said company, by its manager, appeared before said Board of Equalization and introduced evidence in support of the statements and showing made in said return.

Second. That on the sixteenth day of May, 1911, the said Board did arbitrarily and unjustly, and contrary to the evidence before it and to said verified return, and without any information or evidence justifying such action, assess and fix the valuation of the taxable property of said company at \$1,130,535; that thereafter, and on various occasions, the said company, by its attorneys, appeared before said Board and protested against and complained of said assessment as being excessive and unreasonable, and introduced evidence in support of said complaints and protests; said appearances being on the 29th day of June, the 10th day of July, the 17th day of July, the 2d day of August, and the 30th day of August, 1911; that on said 30th day of August, 1911, said Board reconsidered said assessment of May 16, 1911, and assessed the property of said company for the purpose of taxation at \$538,350; said assessment being contrary to the return made by said company and to the evidence before said Board, and being \$484,514.90, or nine hundred per cent, in excess of the fair cash value of said property as set forth in the verified return thereof filed in the office of the Auditor of the State of Oklahoma, and placed by him before said Board, to-wit, \$53,835.10; that on the 2d day of October, 1911, said company appeared before said Board, by its attorneys, to protest against and complain of said excessive, unreasonable, arbitrary and erroneous assessment and valuation of its property, but that said Board failed, neglected and refused, and still fails, neglects and

refuses, to change, correct or modify said assessment and valuation, and ignored and disregarded, and continues to ignore and disregard, said return and all of said evidence introduced before it supplementary to and confirmatory of said return.

Third. That said arbitrary, unjust and erroneous action of said Board, in so assessing the valuation of said company's property for the purpose of taxation in the State of Oklahoma, will, if allowed to stand, greatly and unfairly increase the burden of taxation resting upon said company, and will deprive it of its property without due

process of law, contrary to the provisions of Section 1 of Article XIV of the Constitution of the United States, and Section 7 of Article II of the Constitution of the State of Oklahoma, and will deprive it of the equal protection of the laws, contrary to the provisions of Section 1 of Article XIV of the Constitution of the United States.

Fourth. Your petitioner further alleges and states that in fixing the assessed valuation of the taxable property of said company, the said Board, as your petitioner is informed and believes, attempted to place a value upon and to tax the franchise, occupation, license, or right of said company to do business; which franchise, license and right the said company possesses and is exercising in the reservation of the Osage Tribe of Indians, the same being Osage County, Oklahoma, under and by virtue of a lease specifically approved by the United States Government, through its Interior Department, as guardian of said Tribe; that said lease with said Tribe was specifically renewed by the United States Government by the Act of March 3, 1905, and was further by said Government recognized in the Osage Allotment Act, being the Act of June 28, 1906; that the territory comprising said Osage Reservation, as aforesaid, is under the exclusive jurisdiction of the United States insofar as the rights of said Osage Tribe are concerned; that the operations of said company in said territory, under said lease contract, so made, approved and recognized, are governed by and carried on under rules and regulations promulgated by the Honorable the Secretary of the Interior, as provided in said lease, and that this company is under the direct control of the Government of the United States, exercised by the officers of the said Department thereof; and that any attempt to assess and tax this company's franchise or right to do business and operate under said lease is an attempt to assess and tax a right and franchise granted by the Federal Government,

and is illegal and void; and, further, that any attempt to tax this company's operations and right to do business with said Osage Tribe of Indians under said lease is an attempt to impose, and will result in imposing, an illegal burden by the State of Oklahoma upon commerce with an Indian Tribe, contrary to the provisions of Section 8 of Article 1 of the Constitution of the United States.

Fifth. That said company, your petitioner, is not engaged in a public service of any kind, and is not in any sense a public service corporation, as shown by the evidence presented to said Board; that said Company is not taxable on the assessment of said Board, and

has no property which is subject to assessment and valuation for taxation by said Board, under the laws of the State of Oklahoma.

Sixth. That while this company's surface gas lines run into and through the towns of Avant and Bigheart, in said Osage Reservation, and while this company supplies gas from its said lines to domestic consumers in said towns, it has no franchise rights or duties whatever as a public service corporation in said towns, or either of them, for any purpose; and said company insists that if its service to the people of said towns be adjudged a public service, and this company a public service corporation as to said towns, that still, in no event should any of this company's property be assessed and taxed as employed in a public service, as to said towns, other than the property actually used in serving the domestic consumers in said towns, as shown in the evidence before said Board, and in said return.

Seventh. That the furnishing of gas by this company to the Ochelata Gas & Water Company and the Bartlesville Gas & Oil Company, as set forth in the evidence before said Board, is not a public service; that the said companies so furnished with gas by this company are themselves public service corporations in the towns of Ochelata and Bartlesville, respectively, by reason of certain franchise rights therein, under which they furnish gas to the domestic consumers in said towns, and are so assessed and taxed, as shown by the records of said Board; and that it is unfair, unjust and illegal to attempt to assess and tax this company as a public service corporation upon the same business.

Eighth. That the said Board had no right or authority to increase the valuation of the taxable property of the said company for the purpose of taxation, above the valuation thereof as set forth in the verified return thereof duly filed in the office of the State Auditor, without evidence justifying such increase; and that its action in so increasing such valuation, and in failing, neglecting and refusing to modify, reduce, correct or dismiss such erroneous valuation, and in ignoring and disregarding the information and evidence before it, was arbitrary, unjust, unreasonable and illegal, and will, if allowed to stand, result in depriving this company of its property without due process of law, and in depriving it of the equal protection of the laws, and will render this company unable to carry out the provisions of, and to carry on and perform the duties imposed upon it by, its said lease and contract with the Osage Tribe of Indians and the United States Government; thereby hindering and obstructing the performance of a contract with the Federal Government, and interfering unduly and illegally with commerce with an Indian Tribe; all contrary to the specific constitutional provisions hereinbefore referred to.

Ninth. That this company is now paying and has heretofore paid all legal taxes upon its business and property in this State, including gross revenue, gross production and ad valorem taxes, and that it has not at any time attempted to avoid the payment of any just or legal tax.

VII. Your petitioner further alleges and states that this appeal is taken, and notice thereof was duly given to the Secretary

of State, as required by law, and to the State Auditor, as Secretary of the State Board of Equalization, within sixty days after the making of said assessment, and prior to the adjournment of said Board, and that all the matters and things herein set forth were duly brought before said Board, as shown by the record hereto attached as Exhibit A, and that all the grounds of appeal herein stated were fully set forth in said notices of appeal.

Wherefore, your said petitioner, the Indian Territory Illuminating Oil Company, respectfully requests an examination of this, its petition, and of the transcript and record certified by the Auditor of the State of Oklahoma, as Secretary of the State Board of Equalization, and of the notice of appeal served on the Secretary of State of the State of Oklahoma and on the said Secretary of the State Board of Equalization, hereto attached, with acknowledgements of service, and requests a hearing on this, its appeal from the action of said Board in making said arbitrary, unjust and illegal assessment and valuation of its taxable property and in failing, neglecting and refusing to reduce, modify, correct or dismiss said assessment, in this Honorable Court, on all of said matters set forth in said record and in this petition; and upon final hearing, that the action of said State Board of Equalization be reversed, and that said Board be decreed and adjudged by this Court to be without jurisdiction to assess the property of your petitioner for taxation, for the reason that it is not a public service corporation; or, if any part of the property of your petitioner be adjudged to be used in a public service,

that said Board be permitted and directed to assess only that part of your petitioner's property so used, in accordance with the return and the evidence set forth in the record herein; or, if said prayers be denied, that said Board of Equalization be directed and required to assess the property of your petitioner at its fair cash value, in accordance with the return thereof and the evidence before said Board as set forth in the record herein; and that upon such hearing your petitioner have such other and further relief as may to the Court seem just and proper.

THE INDIAN TERRITORY ILLU-
MINATING OIL COMPANY.

By JOHN H. BRENNAN,
HARRIS & NOWLIN,
KENNETH C. CRAIN,

Attorneys.

EXHIBIT A—RECORD.

In the Supreme Court of the State of Oklahoma.

In the Matter of the Assessment of the Indian Territory Illuminating Oil Co.

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Filed Oct. 31, 1911. W. H. L. Campbell, Clerk.

26 Be it remembered, that on the 22d day of March, 1911, the Indian Territory Illuminating Oil Company filed in the office of the Auditor of the State of Oklahoma its annual return, with a letter of transmittal; said return and letter being in words and figures as follows, to-wit:

27

*(Letter of Transmittal, with Return.)**(Letter Head.)*

BARTLESVILLE, OKLA., March 2, 1911.

Leo Meyer, State Auditor, Oklahoma City, Oklahoma.

DEAR SIR: Enclosed please find Annual Return of the Indian Territory Illuminating Oil Company, showing the taxable property held by it in Osage and Washington Counties, as a Public Service Corporation.

Regarding the questions relative to surplus, undivided profits, capital invested, etc., which have not been answered for the reason that it would be misleading, inasmuch as this Company is primarily a producing company of Oil and Gas, and is only engaged incidentally as a Public Service Corporation, in the supplying of gas to its sublessees for fuel for the development and operation of its lease held by it on the Osage Reservation, and for domestic service in two or three small towns, and which service is of very small moment, probably not amounting to more than an average of \$200.00 per month for each town, its income, surplus, profits, etc., are almost wholly from its oil business, and inasmuch as the oil business and gas business of this Company has never been separated, it is impossible to answer these questions with any degree of accuracy, for the reason that it was never intended by the management to engage in Public Service business, but to furnish gas in wholesale quantities to Companies that were so engaged. But, inasmuch as it was necessary, to supply our own leases and our sublessees with gas for fuel, to build long lines, we naturally, for the accommodation of those along the lines, have permitted others to connect, but you will readily understand that the service
28 along 70 miles of mains, over a sparsely settled country like the Osage is not conducive of much profit, as the care and expense of collection more than equals the receipts.

In relation to our Gross Receipts from the sale of gas for the year, I will say that they amounted to \$35,947.91. Against this we have \$14,873.13 as cost of maintenance, and by careful computation we find that the wells in service to operate this gas deteriorated during the year 28%, and that 28% of their original cost, which we consider would be a fair offset against our receipts, amounted to \$6,884.87. In addition to this, we spent over \$15,000.00 in drilling wells to increase our gas production, with the result that all the wells drilled were complete failures. This last item we believe would also be reasonable to charge against our receipts. Our maintenance account does not include any of the office expense, general expense, legal expense, or any other expense incidental to the general business of the Company, which amounts to many thousands of dollars each year, neither have I taken into account any taxes of the Company. You will thus note that our gas business would be operated at a loss were it not for our other in-

terests, and were it not that it was necessary to the operation of oil business it would be poor business policy to continue.

In the matter of names and addresses of our stockholders asked for, will state that we do not keep a record of them in this office. That record is kept by the Corporation Trust Company, 15 Exchange Place, Jersey City, N. J., and we are unable to furnish it except by application to them.

Trusting that this report will be satisfactory, and assuring you of our readiness at any time to give you any additional information, I am

Very respectfully,

INDIAN TERRITORY ILLUMINATING
OIL CO.,

By CHAS. F. LEACH, *Manager*.

C.F.L./C.W.A.

Enc.

(Here follows annual return blank marked pages 30 and 31.)

\$11898.80

TOTAL SQUARES AND TOWNSHIP

\$11898.80

BLACK DOG TOWNSHIP

2 Mi. 3-in. Line 450 900 13
9.86 " 3-in. " 930 9169.80 28
11.20 " 2-in. " 450 5040 28

All other property and fittings,

8: Mi. 3-in. line 930 100 28
9: " 2-in " 450 7440 29
4050 29 \$26699.80

TOWN OF BICHEART.

1 3-in. H.P. Bronze Regulator 45
1 3-in. L.P. Fulton Regulator, " 30
1 2 H.P. " 25
2 L.P. Regulators 30

61 Meters 15 305
5 Mi. 4-7/8 in Pipe (case) 500
1.17 " 3 " 1000 1088.10
1.65 " 2 " 930 742.50
.65 " 1 " 450 130
Misc. Tools, Fit., Etc., 200 3095.60

1.20" 3 In. Line 930 1116. 43
.28" 2 " " 450 126. 43
6.70" 2 " " 450 3015 35
5.25" 3 " " 930 4882.50 35
.08" 4 " " 1580 126.40
1 2-in H.P. Regulator 25.
1 2-in L.P. Regulator 15.
1 Mfg. Meter 25.

TOTAL BLACK DOG TOWNSHIP

9530.90

\$39126.30

TOTAL OSAGE COUNTY,

\$51025.10

Do Not Write Beyond This Space

2.

ANNUAL RETURN

Of the -----
to the State Auditor of Oklahoma, showing the amount, kind, location and value of all property belonging
to, controlled by, or in process of construction for said person, firm, company or corporation in the State of
Oklahoma, on the first day of February, A. D. 19-----, as required by the State Board of Equalization,
and in accordance with Chapter 38, Session Laws of Oklahoma, 1909.
NOTE.—Footings of columns (Totals 1 and 2) must balance.

State of Oklahoma, <u>WASHINGTON</u>		County, <u>February 1st,</u>		19 <u>11</u>		VALUATION OF the property of the COMPANY as fixed by the State Board of Equalization for the year A. D. 19	
PIECES OR QUANTITY	DESCRIPTION	PRICE EACH	(1) TOTAL	SCHOOL DIST.	(2) TOTAL		
1.40	LINCOLN TOWNSHIP. Mi. 2 in. pipe,	450	630	11	\$ 630.00		

.28	MADISON TOWNSHIP. " 2 in. pipe Chapman and Fulton High	450	126.00	15			

-CERTIFICATE

OF

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1. ²⁸	" 2 in. pipe Chapman and Fulton High Pressure Regulator, Miscellaneous Gates and Fittings	450	126.00	15	
1		30.	30.	16	
			24.	16	
	TOTAL MADISON TOWNSHIP				180.00
	JACKSON TOWNSHIP				
1	50,000 Ft. Proportional Meter,		100.	10	
1	Volume Attachment and Recording Guage		75.	10	
	Miscellaneous Fittings and etc.		25.00	10	
	TOTAL JACKSON TOWNSHIP				200.
	DEWEY TOWNSHIP				
4	Mi. 2 inch Pipe	450.00	1800	6	1800
	TOTAL-WASHINGTON COUNTY				\$2810.00

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32 That thereafter, and on the 18th day of April, 1911, the State Board of Equalization of the State of Oklahoma met at Oklahoma City, Oklahoma, with Charles A. Taylor acting as Chairman, and G. T. Bryan and Leo Meyer present, and that Mr. C. F. Leach appeared before said Board on behalf of the Indian Territory Illuminating Oil Company and made a statement; said statement, and a verbatim report of the examination of the said C. F. Leach by the Board at the time, being as follows, to-wit:

33 *Meeting at Oklahoma City, April 18, 1911.*

Present: Charles A. Taylor, acting as Chairman; G. T. Bryan, Leo Meyer.

Mr. C. F. Leach of the Indian Territory Illuminating Oil Co., appeared before the Board and made the following statement:

I do not know that we will have any troubles; however, I thought it well while the Board was in session to make a statement. Now, the Indian Territory Illuminating Oil Co., as you are probably aware, is the original lessee of the Osage Reservation, and they have subleased to a number of sublessees and have practically reserved to themselves the gas. Early in the development, before Statehood, they laid various lines over the reservation for their own service and for the service of the various sublessees for the purpose of developing for oil and gas. These lines are two and three inch, laid on the surface of the lands, and with very few exceptions they are buried, except in going across a piece of land desirable for cultivation and are but temporary lines. By that I mean that perhaps in one locality there will be development and lines will be laid to accommodate that development. Probably in a few months, possibly in a year, it will be necessary to take those lines up and move them somewhere else. Now, since we have made this report, on the first of March, we have taken up four miles that is returned to the Board of Equalization in our report. Some of this has been laid elsewhere and some held up waiting for a call to be laid at some other point. In making that return, I have based my figures upon what second hand pipe would cost, and allowing what I think would be fair for the laying of that character of lines. Heretofore we have returned on the same basis and the Board of Equalization has seen fit to consider that we have a franchise right in addition to the cost. This, we think, under the conditions, is an erroneous opinion, for the reason, as I say, it is not like as if you were laying a permanent line that would be there for a number of years and in which you were engaged in carrying on a public service business.

This is not, we do not think, a public service, in the first place for the reason that we are the producers of this gas. That under our contract, which I will leave a copy with you for your consideration, with the Osage Tribe of Indians, (Copy attached) and we are granted the right to lay these lines for the purpose of carrying on the development of oil and gas and also for the purpose of marketing this gas. Now, these lines are all within the Territory covered by this

lease except the four miles I spoke of as being taken up. In addition, however, to the service to our sublessees and to ourselves, there are, of course, a number of what you might call domestic consumers along these lines. They are receiving service from us, but we have something like 70 or 75 miles of lines and a comparatively few consumers along these lines, and you will note that from an industrial standpoint, if we were to try to collect from these, the amounts received would not pay for the cost of collecting.

We are also supplying gas to the town of Big Heart and that particular part would reasonably be called public service, because it is. However, we were engaged in that prior to statehood under our laws, but that is but a very small per cent. I will further add that our gas business is not a remunerative business. Now then, of course, the question would naturally arise as to why we are engaged in it if that is true. I will explain that by saying that we have a

34 greater interest in developing the property than we have in the profits derived from the gas, because our profits come from the production of the oil, because the more barrels of oil produced, the more is our royalty in them. We have, I will state, in all these subleases an equity interest, or you might state a brokerage interest in all the oil produced, so that is where we get our profit. In making my report for the Corporation Commission last year, you will find in that report these figures:

Gas wells and maintenance.....	\$7,926.00
New wells.....	6,605.00
Expenses of changing of lines.....	5,703.00
Meters	247.00
Tools and instruments.....	333.00
Estimate general taxes.....	1,500.00

We were assessed \$70,000.00 so I think I am away under. Our gross revenue tax was \$295.00. I estimated 25% of the general office salaries and expenses, \$2,300.00; 25% of clerk hire, \$250.00; horse care, wagon and hire, \$868.00, making a total of \$30,440.00. There was received from gas during the same period, \$28,415.00, so you can see there was a shortage. Now, as I stated before, in the first place, we hardly think we should be considered a public service corporation. In the second place, on account of the character of our lines, we feel that we should not be charged any more or assessed any more than our lines are actually worth. That there is no franchise value such as would be in a regular public service corporation where they have their lines permanently laid and are making a business of the sale of gas to provide consumers. And third, that in view of the fact that we are only marketing this to our nearest market, that additional values should not be placed upon it. It is necessary, in marketing gas, to convey it a certain distance, be that ten feet, one hundred feet or three hundred feet; if there was a pipe line we were delivering it to, we would have to pipe it a certain distance from the well. If we conveyed it 100 feet to a pipe line, we might be classed as a public service corporation. It does

not seem to me it makes any difference whether 100 feet or a mile. I think that is about our position.

By Meyer:

Q. From this statement, you have not made any improvements at all, have you, comparatively speaking, with last year?

A. You see, our improvements are taking up and moving some place else. Let me illustrate. It is just moving around from one place to another.

Q. Your company is incorporated with \$3,500,000.00 under the laws of New Jersey; is that all paid in?

A. I cannot say. I will be frank with you. I do not know. I have just been with the company a year. All of that was done years ago, and consequently I do not know.

Q. Is it not a fact that your company is in the field more for the purpose of handling lease property in Oklahoma than for actual profit?

A. No.

Q. You simply sublease?

A. Let me explain; there is a misconception as to what the Indian Territory Illuminating Oil Co. is at this time, in relation to handling of leases. A lease was originally granted, covering the entire Osage Reservation, about 1,500,000 acres, and as you
35 will notice, by the lease, there was a provision for renewal under certain conditions. This lease was renewed in 1905 for an additional period of ten years, to the extent of 680,000 acres. This 680,000 acres was to cover just the lands that had been subleased by the Indian Territory Illuminating Oil Co. At the time of that renewal, the Indian Territory Illuminating Oil Co. found itself with 2,000,000 acres upon which they had actual operating wells. Now all the territory that the Illuminating Oil Co. now owns they have purchased, just the same as you would purchase, from a sublessee, and they have no lands for sublease since the renewal of the lease in 1905 except such lands as they have purchased. I will say in relation to that, that they have not to my knowledge issued a sublease since the renewal covering any lands except in two instances which were to perfect title, and with the consent of the Secretary of the Interior, and all papers were returned to the company and they issued a new sublease, simply to perfect title. They had no equity in the property.

Q. When you rendered these figures, did you expect the Board to at least double them?

A. No, I did not.

Q. You would not object to this Board of Equalization putting the figures to where they were last year?

A. No, I think that is unjust. If you will note there, you will see that I have shown you the figures on second-hand pipe. There is a list in which we quote two-inch pipe at 5½ cents to 6¼ cents. In this return, I have allowed 7 cents for that pipe and allowed \$54.00 for the laying of it. In the matter of three-inch pipe, it is quoted from 13½ to 14 cents. You will note that I have returned it

at 16 cents, and allowed \$85.00 for laying it. In the matter of four-inch pipe, that is quoted at 21½ cents to 22 cents, and I have just returned it at 25 cents and then allowed \$250.00 per mile for laying it. The 5⅝ inch, that is ten-pound casing, that is just exactly what it cost. I returned it at what it cost, and have allowed \$496.40 for laying it. You see I have tried to return this at just what the material was worth. Unless you find that there is a franchise value, I do not think there is any value in the lines over and above at what I have returned it, and unless you find a fictitious value, I do not think there is any grounds for raising it.

36 In the Supreme Court of the State of Oklahoma.

In the Matter of the Assessment of the Indian Territory Illuminating Oil Co.

Carl Lumpkin, of lawful age, being first duly sworn, on oath says: That he is one of the official stenographers and reporters of the proceedings of the State Board of Equalization; that in such capacity, he attended the meetings of said Board from time to time, and faithfully and correctly reported said proceedings; that he attended the meeting of said Board held on the 18th day of April, 1911, and that the foregoing pages, headed and referred to as of that day, contain a full, true, correct and complete transcript of his shorthand notes of the proceedings on said day relating to the assessment of the Indian Territory Illuminating Oil Company, and a full, true and complete record of all oral and written testimony, and of all exhibits, statements and pleadings introduced thereat on behalf of said Company, and of the rulings and orders of said Board in relation thereto.

CARL LUMPKIN,
Official Reporter.

Subscribed and sworn to before me, this 30th day of October, 1911.

E. F. KEYS, [SEAL.]
Notary Public.

My commission expires January 4, 1913.

37 That, thereafter, and on the 16th day of May, 1911, the State Board of Equalization met at Oklahoma City, Oklahoma; a true copy of the minutes of its proceedings relative to the assessment of the Indian Territory Illuminating Oil Company being as follows, to-wit:

38 OKLAHOMA CITY, OKLAHOMA, May 16, 1911.

* * * * *

The Board of Equalization met pursuant to recess taken at 1:30 P. M. with the following members present:
Governor Lee Cruce, Chairman.
State Auditor Leo Meyer, Secretary.

State Treasurer Robert Dunlop.
 Secretary of State Ben F. Harrison.
 State Examiner and Inspector Charles A. Taylor.
 President Board of Agriculture G. T. Bryan.
 Attorney General Charles West.

* * * * *

It was moved and duly seconded that the assessed valuation for the purpose of taxation of the property of the Indian Territory Illuminating Oil Company to be fixed at \$1,130,535. Motion carried, all members voting aye.

* * * * *

State examiner and Inspector Taylor made inquiry as to the business transacted by this Board during his absence during the morning session and ratified the action of the Board.

It was moved by Harrison, seconded by Dunlop that the State Board of Equalization adjourn subject to the call of a majority of the members of the Board or until such Board meets to equalize the valuation of the property as returned by the county clerks. Motion carried, all members voting aye. The Board thereupon adjourned.

39 That thereafter, and on the 29th day of June, 1911, the State Board of Equalization met at Oklahoma City, Okla., and certain proceedings were had before said Board relating to the Assessment of the Indian Territory Illuminating Oil Company, and certain oral and written evidence introduced; a true transcript of said proceedings, with copies of the exhibits introduced, being as follows, to-wit:

40 OKLAHOMA CITY, OKLA., June 29, 1911.

The State Board of Equalization met at ten o'clock A. M. June 29th, 1911, with the following members present:

Governor Lee Cruce, Chairman.
 State Auditor Leo Meyer, Secretary.
 Secretary of State Ben F. Harrison.
 State Treasurer Robert Dunlop.
 President Board of Agriculture G. T. Bryan.
 Attorney General Charles West.

Absent: State Examiner and Inspector on account of illness and out of the City under the direction of a physician.

The following proceedings were had:

Mr. John H. Brennan representing the Indian Territory Oil and Illuminating Company was present and made the following statement:

"Merely for the purpose of having an issue to answer the situation, I would like to ask if it is proper to ask what the grounds were upon which the assessment was raised from \$90,000 to over a million and if there was any evidence on that proposition that we should meet here.

Mr. Harrison: You were before the Board. Didn't you appear before the Board?

A. No, one of our witnesses appeared and made a statement along the lines of the return. All I ask for now is for the purpose of getting an issue and seeing what we have to meet.

Mr. West: The Board considers not only the sworn statements made to it but everything they know or hear of.

A. I merely wanted to know what it was that was introduced in evidence if anything upon which you made the raise.

Mr. West: Any one comes before us we ask him what the cost of pipe lines are, what the business probably pays and what it probably costs, we couldn't give it all to you.

A. Then as I understand it there wasn't any additional evidence introduced in our absence.

Mr. Harrison: Other witnesses that came before us on other matters were asked questions concerning various companies.

Mr. West: I think we asked you about some four or five companies didn't we?

A. Yes sir.

Q. That is the way we do with pretty nearly every one.

A. The raise was so startling we didn't know but what you had something in mind.

Mr. West: The explanation of that is, we are taking the business as a business; we are not assessing the pipe in the ground.

A. Even as a business I didn't know but what there was some evidence introduced you know. I would like to call the Chairman's attention to our return in one particular if you have the return here. Mr. Chairman the only point is that there are two questions in the printed form; total operating expenses for the year ending June 30, 19— and total expenses for repairs ending June 30, 19—; total expenses for improvements. That was answered more fully than might be answered here. More fully and thoroughly by an attachment as an exhibit to this return and I didn't know but what it might have escaped your attention.

Q. What is the point about it?

41 A. The point is, there were two or three questions that were in such form that they were not answered and if your attention was called to it you might think it was intentional if it was not for the fact that the exhibit next to the report answered it more fully and completely.

Q. What were those questions about?

A. Total improvements, etc.

Q. What is the amount he spent in the maintenance of the property separate from the drilling of the holes?

A. I haven't got that letter before me now.

Q. Can you tell me about what it was, because a difference of several hundred dollars wouldn't make any difference.

A. I can get you a copy of that letter.

Q. How many miles of main line?

A. 65 or 70 I think.

Q. What kind of pipe?

A. Two inch and three inch, I think, most of the surface pipe.

Q. That gas pipe?

A. Yes sir.

Q. Have you any trunk line at all?

A. No, none at all. We are not in the gas business. I think there is a mis-understanding as to why these lines were built.

Q. What business are you in?

A. The oil producing business and these gas lines are temporary pipe lines lain on the surface of the ground for the primary purpose of furnishing the producers of oil with fuel.

Q. For drilling?

A. For drilling.

Q. You sell them the gas?

A. Ninety per cent. We sell them the gas; we have an interest in each lease we thus serve and it is for the purpose of promoting our own interests that these lines have been laid; probably different from any other business you could think of.

Q. The probability is you sell your gas for pretty nearly what it cost you?

A. We sell it for less, losing fifty thousand dollars in five years.

Q. Do you sell to anybody you are not interested with?

A. Yes sir, two little towns, Avant and Big Heart.

Q. How much did you make last year on those two towns, gross?

A. I think the gross receipts from those two towns would be \$500,00. Four thousand feet a year. We can give you statements under oath telling it exactly.

Q. How — profit did you make out of that?

A. Just in a minute. I would like to make a record here. Do you want me sworn?

Q. If you want to be.

A. If you please.

(The witness is here sworn.)

If you will let me introduce this map.

(Map showing the lines of the Indian Territory Illuminating Oil Company offered in evidence and made a part of the record in this case and Marked Indian Territory Illuminating Oil Co.'s Exhibit A.)

It shows all our lines absolutely. It will explain the business and how we happened to get into it. This shows the two inch, three inch and four inch line and it is drawn according to the scale and so you have the whole business before you.

Q. We have so much to do and so little time to do it in you will have to call to our attention what is material to the question.

A. The whole map. Now these lines were not put in all at once. They were put in by extending the lines running from the small gas wells to a producer, then extended, then run over, then taken up and moved and put over to another producer's wells and most of these lines, ninety per cent of them can be moved and are moved from time to time and year to year for the purpose of getting this

production. The little towns of Avant and Big Heart, the lines in those productions, there is no part that can be used for a trunk line or large system in introducing gas at a distance to large consumers. We haven't introduced this system from where we get the most oil. We get the most oil from near Osage Junction for the reason that it is a losing system; we got into it by accident and not intentionally. It has been a losing game and I have been against it as far as I am personally concerned all the time. We have lost fifty thousand dollars, except we charged in there one third of the office expenses and if you would strike out that it would show a loss anyway.

Q. What is the actual loss you can allocate to this business?

A. I would say disregarding office expenses, it would show a loss of five and ten thousand dollars. Where we run these surface lines to the producer we charge a flat rate.

Q. But the rest of the business is simply furnishing gas to oil drillers with whom you are interested in the lease?

A. Yes sir. Except we furnish Ochelata; we also furnish about \$200 a month to the Bartlesville Oil and Gas Company. We are also bound under our lease to furnish members of the Osage Tribe free of charge. Then there are some farmers along the line——

Q. What do the farmers' business amount to?

A. It amounts to——

Q. Gross.

A. The total collections are \$190.00 a month but \$96.50 is supplied by the oil companies, therefore, outside of the oil companies and the amount on the lease there would be \$94.00 a month from the domestic consumers along that line. About a year ago we attempted to get into a larger gas business and we have drilled a series of ten or twelve dry holes all over this up here and the gas business, such as you anticipate we might be in now we are not in that business yet, although we have a good deal of eight inch pipe ordered, and of course when we do get into it we will file a map showing just where we proceed when we start in. Now the company is not in the leasing business now. Say prior to Dec. 1st, 1904, its property has all been sub-leased. It only has 2,000 acres, largely given to it and 20,000 it bought. It has a royalty from the rest of the stuff of 1/24 net.

Q. That is the oil business?

A. That is the oil business and that of course is 95 per cent of the business.

Q. You intend to go into the gas business?

A. If we get the gas, but we have failed in the last year.

Q. What are your rights worth?

A. The gas in the ground?

Q. Yes sir?

A. I haven't any idea. We thought they were considerable in 1909.

Q. Have you any one present who knows more about that than you do?

A. No.

Q. Then you can't give the Board any information at all?

A. Except we drilled nine or ten holes in succession last year, getting one small gas well. A. That has just been put in, and we may not put it in.

Q. You intend to go into the business of selling gas?

A. We did intend to but we haven't got the gas, we failed to find it. A short time ago I was down here with reference to another company and the Governor suggested to me that things might change between then and now and that is the change; it has grown a great deal worse and come to a complete standstill with reference to both cases.

Mr. Harrison: Do you turn in any valuation for your interest in these oil leases?

A. All we are taxed on; we pay taxes on our gross production; we pay taxes on our gross receipts, on the gas we produce; on the gas going through the line and on the line it goes through. There isn't anything we don't pay a tax on.

Mr. West: What consideration do you get for this service you make to these oil drillers?

A. We charge a flat rate, *arbitrary*; started eight years ago when the gas business was new and we never raised it on them.

Q. That is the business you have made a loss of \$5,000 or \$10,000 on?

A. Yes sir.

Q. What other consideration do you get, why do you keep on doing it?

A. The other consideration—we are interested in all the leased that those lines run to.

Q. Can't you approximate the value of that service to those leased you are interested in?

A. You could as well as I can.

Q. We have done it and you must show us where we are wrong.

A. I claim that at least 85 per cent of the property returned in our sworn statement we are not taxable on, because we are not a public service corporation as to the service to these men who are producing wells on the lease. We are acting under a grant from the

United States government under the act of Congress. We are acting under the rules and regulations of the department.

It may be Avant and Big Heart that we might be considered a public service corporation, but as to this other, I submit we are not a public service corporation and subject to no taxes. Surface pipe lines that run from oil producers' fields are not to drill wells but develop the territory. I submit to this Board that at present it should not be taxed.

Mr. Cruce: Do you think it should be taxed locally?

A. Yes sir. We pay taxes locally and submit our property locally.

Q. Have you rendered that locally?

A. No, because it didn't come up until this meeting before this Board. It didn't come up until I was analyzing the situation with reference to presenting this to you. We put in such property as we

could. This line runs to our own property. There is \$7,000 worth that should not be returned, no matter how you view this.

Q. Does your company own any property outside of Oklahoma?

A. No sir.

Mr. West: You say you furnish gas to the Osage?

A. Yes sir.

Q. What is that worth?

A. It wouldn't be very much that we do serve. I could get a list of the number. Fifteen or twenty families. That is under the original lease; we are bound to do that.

Q. Is that worth more or less than what you serve to the farmers?

A. It was worth less. We don't serve as many people there as we get receipts from.

Q. And the consumption by the free users isn't greater than that by the people that pay?

A. Yes sir.

Mr. Cruce: You say all your property is owned in Oklahoma?

A. Yes sir.

Q. I notice in your sworn statement returned to this Board that you are capitalized at three and one half million dollars, and you state it is all paid up?

A. Yes sir.

Q. What have you done with that three and one half millions?

A. That wasn't paid in. That was given before our time. The company was organized by promoters in New York. I represented the owners. I represented the old owners. I had to get it out of the hands of the promoters; they had against it 3½ million dollars. I got it away from them after litigation and then I paid out the stock to the owners of the property; that was the best I could do under the circumstances.

Q. How much was paid in stock?

A. Nothing paid in.

Q. Nothing paid in on the 3½ million dollars?

A. No, the leases were turned over. I have made a statement at length of our position in this matter before the Board and I have covered that capital stock business. The capital stock far exceeded of course the value of the lease, but it was not our deal and it was not the old owners' deal; that was the reason I happened to become first connected with the property was to get it out of the hands of these people.

Q. How much do you figure your property is worth?

A. As I was going to say, in 1909, the first part of 1910, that field we thought had considerable value, but these dry holes has changed the status of the whole situation. I might best answer you by an incident. I have fifty thousand shares of stock which I tried to sell for fifteen cents for eight months. There is no market for the stock. Those things that there isn't any question about we can all discuss openly. The company has no secrets. I know all about the business of the company. I am a director in the company. If you have any questions to ask I would like to answer them now.

Q. What do you consider your property worth?

A. I gave you an incident; it went to show that was the best way I could explain it. I think it ought to be worth \$500,000.

Mr. West: You mean oil and gas?

A. It expires in a year—in five years. If you gentlemen will understand and go into this in detail and not let me forget incidents of that kind you will see the reason for it. In 1910 and 1909 I bonded it for \$300,000. I couldn't sell a bond because it expired in five years without any right of renewal.

Q. You mean the lease expired?

A. Yes sir.

Q. Who have you got your lease with?

44 A. The United States granted it and our business is mostly with a tribe of Indians on the Indian Reservation.

Mr. Harrison: You haven't got the usual form of lease?

A. No sir. This is a special lease granted by the Act of Congress, March 3, 1905, and that is the reason why I claim the service under that lease under the rules and regulations of the Department of the Interior is not subject to the jurisdiction of this Board. I don't think the Corporation Commission could lay down any rules with regard to the service.

Mr. Cruce: You never sold any bonds?

A. No sir and I tried for quite a little time. There is no question about this because I know what the condition of the property is thoroughly.

Mr. West: What is the business of the Ochelata Gas and Water Company, what ought it to be worth?

A. We haven't got a cent out of that for a year.

Q. Why?

A. Because it is defunct and we would stop if it wasn't for the people in Ochelata. We only get \$1,000 a year proceeds any way.

Q. You mean that thousand amounts to \$100 a month?

A. Yes sir.

Q. It ought to be worth that ought it not?

A. Yes, it ought to be worth that much. You understand this line is so long it requires a good many men on it.

Mr. Cruce: What are your expenses?

A. The gas side of it?

Q. Yes sir.

A. The expenses of the oil would be enormous because we are drilling wells all the time. You take a lease that produces \$150,000 in a certain length of time, \$150,000 on the right side of the ledger and if they drill thirty wells in the Osage that would be \$150,000. The expiration of the lease on that situation is what hurts. Where there is a sub-lease that is very valuable that goes into the market and is sold today; there are some sub-lease companies that are richer than we are. I think there is one section down here that is twice as rich as the Indian Territory Illuminating Oil Company.

Mr. West: Are they furnishing gas to any one?

A. No, but if we furnish it it ought not to be subject to a burden; it ought to be fostered.

Q. You do act in a public capacity towards a business of \$4,000 a year to Avant and Big Heart?

A. We haven't got a franchise. I don't admit it at all. I think we could pull our lines out of there in a minute and the State Corporation Commission couldn't interfere with us.

Q. Suppose then you have a business of a public character towards Avant and Big Heart which you don't agree to, and \$1200 for furnishing gas to some farmers, I don't know whether you agree to that or not, and \$1200 a year to Ochelata; it ought to be worth that much. Have you any other business of that character, that is, like the service you are giving to Avant and Big Heart, the Farmers and Ochelata?

A. No. The Bartlesville, I mentioned that before, the Bartlesville Oil and Gas Company about \$200 a month now. Through this three inch line that runs up here about 25 miles.

Q. How about this Osage, is that worth half as much as you give to the farmers?

A. I suppose it is just about.

Q. On our theory all of these five, the Avant and Big Heart; the farmers, the Bartlesville Oil and Gas, the Ochelata, and the Osage Indians, we believe is a public service business and subject to assessment by us; on that basis it would amount to about a business, in the neighborhood of \$10,000 a year, \$9,400.

A. We are taxed again by the State of Oklahoma under another law.

Q. What ought that business considered in that way be worth?

A. Well, that business isn't worth anything.

Q. You think that is worth nothing?

A. No.

Q. Are you answering my question? Do you mean to say that if you had a public business——

A. You are stating a hypothetical case.

Q. On our theory it is.

A. I haven't any idea what it would be worth.

45 Q. Suppose those five were worth ten thousand, what ought that business to sell for?

A. I haven't the least idea.

Q. Do you want to offer any evidence on that?

A. Not on that hypothetical case, no.

Q. What per cent of your entire business is your gas business?

A. I figured it up, about 1/12 I think counting receipts.

Q. Well I mean the business, of course it is a difficult thing to compare a gas business to an oil business, but suppose you instead of figuring on receipts figured on expenses, of your total expenses, what are your expenses in your judgment on the gas business compared to your oil business?

A. Well I will let Mr. Leach answer that.

Mr. Leach: I can answer exactly what the expenses are on the gas business. I could not answer just exactly the cost on the oil business.

Q. I am trying to get information as to how to compare the gas business with the oil business. Mr. Brennan don't care to offer any evidence as to the value of your gas business, so there are three ways I can get at it. Either the receipts, the expenses or the investment. Do you know any other way of making a comparison?

A. I don't understand you.

Q. I think this Board has the duty apparently of making a division between the value of your property that is used for a non-public business and what is used for a public business.

A. Yes sir.

Q. And you won't give me any information direct upon the hypothesis I think we will adopt, that your gas business is public, therefore that forces me to resort to some arbitrary indication and the only way I know of is to divide it either according to receipts, expenses or investment. I want information on those three heads.

A. If you are going to assess this business as a gas business which you may if you choose perhaps, the question is what is that business worth, not what you would place upon it by a suspicious guess; you don't have to guess at it as the evidence is here, what it is doing, what the expenses are and what the receipts are; also the gas lines, there is your statement of receipts which we will furnish more fully.

Q. You are furnishing gas daily to a business that ought to receive about \$10,000 a year, gross, isn't that correct?

A. Gross, oh yes.

Q. I have asked you what that business is worth?

A. You can't tell what the business is worth by giving the gross receipts.

Q. On the contrary I have always understood it was some indication.

A. It is some, and in the use of the word "some", you are quite correct.

Q. I also believe that the amount of investment is some indication.

A. I will give you the original cost of these lines, labor and expenses, and all that as submitted to the Corporation Commission.

Q. Now I want to separate the oil from the gas business?

A. We are not making any statement on the oil business.

Q. The understanding is that this statement you are making is solely on the gas business?

A. These gas lines on this map, the greater part of which I claim is not under the jurisdiction of this Board in any event. I think that adds up in Avant, \$1625; in Big Heart, \$4,137; buried, and all the rest of the lines on the surface of the ground, \$70,918. The original cost, labor and everything of all these lines was about \$77,000. They were put in at an early date.

Q. In addition to your gas lines what other investments did you make in gas property, producing wells or anything else that adds to the gas business?

A. We bought over a great many producing wells.

Q. What investment did you make in gas properties outside of gas pipe lines.

A. If you are going into that I would like to put Mr. Leach on the stand.

Q. You can't answer that question?

A. No. It is some considerable figure you know; if I remember it was \$18,000 in one year.

Q. What is the ratio as near as you can state it of your investment comparing the entire oil and gas properties, both pipe lines and other things?

A. There is no comparison.

46 Q. What is it?

A. I think it was about $1/12$, I told you before.

Q. That is the best estimate you can give?

A. Yes sir; I tried to figure with it day before yesterday.

Q. The ratio of gas investment compared to oil investment is what?

A. I say I figured it out a day or two ago and I figured it $1/12$.

Q. And then you stated to Mr. Leach that you included the gas investment which would be $1/5$?

A. No, I didn't say that. You didn't get it. I said if I included the original investment it would be $1/50$.

Q. What was the whole investment?

A. The whole investment was the transfer of this lease for the stock.

Q. How much was it?

A. How much was what?

Q. The whole investment?

A. The lease for the stock.

Q. You say the gas investment is $1/50$ of the whole?

A. I didn't say so. I said if certain things were included. You have brought up a discussion between me and Mr. Leach.

Q. I want to get information. You say that your gas investment is $1/50$ part of something; I want to know what that something is.

A. I suggested to Mr. Leach if you included the original investment taking the oil properties that were transferred over for the stock, the gas investment would be much less as compared with the oil investment originally.

Q. Than it is now?

A. Yes sir, because the lease is rapidly expiring and the value is rapidly depreciating.

Q. What was the original total investment down to the present time?

A. What do you mean by that down to the present time?

Q. You don't want to answer that question?

A. Certainly I do. I want to know what you mean by original investment down to the present time.

Q. You said to Mr. Leach if you included everything that was invested down to the present time it would be much less. I want to know what that investment was from the beginning?

A. I think I have stated that over and over again.

Q. You don't care to repeat it?

A. No.

Q. What is the ratio of the earnings, receipts, I mean by earnings, gross earnings, receipts of the gas investment compared to the oil investment from the beginning?

A. From the beginning I couldn't state what it was, but we can give you those figures, but it is 1-12 on one year's.

Q. One twel-th now?

A. I did figure it from the beginning at one twelfth.

Q. Then the only comparison I can gather from your statement is on the point of receipts. I can get from you no definite statement as to the ratio of expenses. You say that Mr. Leach can give that. I can gather from you no definite statement as to the gas investment compared to the total investment in figures?

A. Yes sir.

Q. You want to leave it that way in my mind?

A. Yes sir.

(Witness excused.)

MR. CHARLES F. LEACH, after being duly sworn, made the following statement.

By Mr. Brennan:

Q. Where do you reside?

A. Bartlesville.

Q. Are you associated with the Indian Territory Illuminating Oil Co.?

A. As its manager.

Q. How long have you been manager of that company?

A. Since a year ago last September.

Q. Prior to that time were you engaged with that company? In the field?

A. I was.

Q. In the Osage Reservation?

A. Yes sir.

Q. What was your business prior to that time?

47 A. In charge of the Osage Agency in the Indian service.

Q. Do you know that field covered by the map before us thoroughly?

A. Yes sir.

Q. Did you hear some of the questions asked me by General West?

A. I did.

Q. Have you with you figures showing the comparative total expenditures of the oil department as it is from the total expenditure in the gas department?

A. During what period?

Q. From the beginning?

A. I have the expenditures on gas lines for the last year but not a definite expenditure of oil for the reason I didn't contemplate the oil expenditures would be taken up.

Q. Could you secure the statements for the General from the books and forward it here?

A. I could do that.

Mr. West: At the present time can you estimate them?

A. I would estimate them that the oil expenditures were in the neighborhood of \$7,000 a month?

Q. And the gas?

A. The gas expenditures, well I think about \$2500 a month; about \$3,000 a month.

Q. And the oil about \$7,000 a month?

A. Yes sir.

Q. Can you give me an estimate of the oil investment?

A. I cannot, no sir.

Q. Does it show in the books?

A. It perhaps does. I suppose it could be ascertained by going through the books for the various years.

Q. That is a joint investment; the two businesses are managed together aren't they?

A. They are managed together, but we keep the expenditures and receipts separate, that is, I might say, maintenance expenses, office expenses for instance, managers office, help, and such items as that, general expenses.

Q. What do you do with that?

A. That is the only common expense.

Q. In this figure you gave me of \$7,000 a month does that include expenses for general management?

A. Yes sir, that includes the whole thing.

Q. And this figure \$3,000 a month for gas business, does that include any expense for general management?

A. That expenditure, no it didn't.

Q. It didn't?

A. It did not, no sir. That statement, that was constituted of \$14,873 for maintenance of gas, labor, etc. and 28 per cent of the original cost of the wells for gas; that was arrived at in this manner. We took a test, a careful test of the pressure and volume of the wells and every day or two I would take another test showing that these wells had depreciated 28 per cent; deducting 28 per cent of the actual cost of these wells I found it to be \$6,884.

Q. What is the cost of your gas wells?

A. I haven't that here.

Q. You took 28 per cent of some figure, what was the figure you took 28 per cent of?

A. That \$6,887 is the result of 28 per cent of the wells that were in service from which the gas was used.

Q. By finding out what figure 28 will produce \$6,000 then it is clear you at least get the investment of these gas well- that are now in use don't you?

A. Yes, sir.

Q. Can't you give me that figure then at least that far?

A. That can be worked out; that is a matter of computation and can be made at any time.

Q. What part of this \$7,000 a month you attributed to the whole business is based on the same theory—same method as the \$3,000

a month that you attributed to the gas business? In the \$7,000 a month you include general expenses; in the \$3,000 a month you don't include general expenses?

A. No sir, none of the officers' expenses.

Q. Then tell me how much the oil business would be a month on that basis?

48 A. I intended to make myself clear on that basis if I didn't.

Well, I would prefer to make that from the books rather than make the statement for the simple reason I haven't those figures.

Q. We have to settle these things and have to settle them now.

A. I didn't know you were going to take up the oil business.

Q. As an accountant you have had some experience?

A. Well, I am not the accountant of the company.

Q. In the absence of other evidence, isn't a division according to expenses some indication of relative value?

A. Not necessarily so.

Q. I didn't say necessarily so. I said in the absence of other evidence it has some indication?

A. No.

Q. All right.

A. I want to explain my position for the reason that the gross receipts from gas isn't any indication of the value of that property for the simple reason that the expenses besides the gross receipts, will in the case of the whole production show the reverse; one shows a profit and the other doesn't.

Mr. Brennan: It isn't fair nor logical in ordinary cases, the examination you are pursuing because the most of our oil receipts are from royalties from which we have no expenses and from which we have taken out over \$600,000 in eight years. It is net royalty. There are no expenses connected with it so far as we are concerned.

Q. Up to this time I haven't asked you a single thing about the receipts from oil.

Q. How long have you been manager of this company?

Mr. Leach: A year last September.

Q. And have had intimate connection with its affairs?

A. So far as the physical manager of the property.

Q. For the purpose of dividing the value of these properties you can't give me any further information as to the ratio of the expenses in the two business-?

A. No.

Q. Can you give me any information as to the ratio of investment in the two businesses. Can you give me anything as to the total investment in either business?

A. Only what you have before you.

Q. What is that?

A. That affidavit.

Q. I want you to state it?

A. I don't know.

Q. Will you state now as general manager, will you estimate what

the total investment in the gas business is; what the total investment in the oil business is and the ratio of the two?

A. The original?

Q. I said total?

A. If you make it total in the gas business I would state according to my statement returned to the Board of about \$53,000.

Q. Is the total investment in the gas business?

A. Total value.

Q. I want to know what is the total investment?

A. In the pipe lines?

Q. I mean in the gas business?

A. Couldn't do it.

Q. Can you give me the total investment in the oil business?

A. No sir.

Q. Can you approximate it?

A. I wouldn't attempt to.

Q. You won't do it?

A. I don't mean that I will not do it. I mean I can't do it upon the figures before me.

Q. Do you mean you offer to do it hereafter?

A. Yes sir.

Q. You do offer to do it hereafter?

A. So far as I can obtain it.

Q. Well then I will not question you any further until you are further informed. You understand me well enough to know that where you have a mixed business, that is a business that operates two different kinds that ordinarily speaking it is fair to divide the one according to either expenses, receipts or investment and I want to see it in all three ways and any other ways you know of and recommend as being fair.

49 A. It doesn't occur to me that the principal of taxation is upon what a thing costs. It may have been worn out. These pipe lines are not worth as much as they were six years ago.

Mr. Brennan: I would like to submit a statement of the receipts and disbursements of the gas business for the last five years from the books of the office.

(Statement pertaining to the Gas business of the Indian Territory Illuminating Oil Company covering the period from Jan. 1st, 1907 to and including May 31, 1911, offered in evidence and marked Indian Territory Illuminating Oil Company's Exhibit B, and made a part of the record in this case.)

"Indian Territory Illuminating Oil Company.

Statement Pertaining to Gas Business Only, Showing Receipts from the Sale of Gas and Disbursements in Connection Therewith, Covering the Period from January 1st, 1907, to and including May 31, 1911.

		Yearly loss.
Receipts from sale of gas Year 1907....	28,415.18	.....
Disbursements Year 1907....	43,330.33	15,915.15
Receipts from sale of gas Year 1908....	30,409.87	.....
Disbursements Year 1908....	43,277.88	12,868.01
Receipts from sale of gas Year 1909....	28,132.94	.....
Disbursements Year 1909....	37,207.79	9,074.85
Receipts from sale of gas Year 1910....	35,947.45	.....
Disbursements Year 1910....	41,700.89	5,753.44
Receipts from sale of gas January 1 to May 31, 1911.....	21,579.99	.....
Disbursements January 1 to May 31 1911	28,998.64	7,418.65
Total Disbursements.....	194,515.53	50,030.10
Total Receipts.....	144,485.43	
	50,030.10	
Total loss	50,030.10	50,030.10

Mr. West: Will you submit a statement of receipts and disbursements of the oil business for the same period?

Mr. Brennan: Yes, sir.

(Affidavit of Mr. Mortimer F. Stilwell, offered in evidence and marked Indian Territory Illuminating Company's Exhibit C. and made a part of this record, a copy of which is as follows:)

"To the Corporation Commission of the State of Oklahoma:

STATE OF OKLAHOMA.

Washington County, ss:

Mortimer F. Stilwell, being first duly sworn, doth depose and say: That he is the Secretary and Treasurer of the Indian Territory Illuminating Oil Company; that he was formerly the manager of said Company and became interested in the company as manager about 1903. That he has examined the map drawn and submitted

by ———, an engineer for said company and deponent
50 says that nearly all the buildings of said lines to producers and drillers was built under his supervision. That deponent has made a careful examination of the books of the company to ascertain the actual cost of said lines per mile but that there has been great difficulty in the business for the reason that these lines

are small superficial surface lines and have been moved from time to time to accommodate drilling operations.

That the statement following is true and correct as to actual cost per mile of the said lines of the Indian Territory Illuminating Oil Company shown on the map so submitted by said ———, which includes all connectings, fittings, regulators and all material used in connection with the lines:

That said map shows all of the lines of said company and this statement includes all said lines.

That said Indian Territory Illuminating Company has no real estate except the lease granted by the United States Government over part of the Osage Reservation, except two lots in Bigheart, on one of which is erected a dwelling and on the other a barn and small office, both for the use of one of the line foremen. Its rights of way are granted in the original lease. Said company has no station grounds, no tanks, farms and no pumping stations. Said map designates the size of mains and lateral lines of said company and shows the length, size and kind of said main or lateral lines. The said company leases no lines from other companies, or individuals.

In Avant.

		Cash per M.	
1.62 miles 2"	(3.5# buried at	1003.20 (19c.)	1625.18

In Bigheart.

		Per M.	Pr. ft.
.48 Miles 1"	(15# buried at	633.60 (12c.)	304.13
.78 " 2"	(3.5# " "	1003.20 (19c.)	782.50
1.17 " 3"	(7/54# " "	1795.20 (34c.)	2100.38
.40 " 4 7/8"	(13# " "	2376.00 (45c.)	950.40

Fifty Nine Gas Line.

29.90 miles 2"	(3.5# ground at	6.33.60 (12c.)	18944.64
29.50 " 3"	(7.54#) " "	1478.40 (28c.)	43612.80
2.21 " 4"	(10.66#) " "	1848.00 (35c.)	4048.08
1.80 " 5 5/8"	(16#) " "	2376.00 (45c.)	4276.80

70918.32

These lines were put in from time to time through the course of six or seven years and were extended and later taken up, moved, etc., from time to time as the development of drilling operations required. Said Company has no substantial large pipe line that will accommodate any large quantity of gas for any great distance. There is no permanency to the lines embraced under the title "Fifty Nine Gas lines." All our rates are flat rates except where we furnish pumping stations on big oil lines, and the metre on the lines of the Bartlesville Gas and Oil Company.

(Signed)

MORTIMER F. STILLWELL.

Subscribed and sworn to before me this 24th day of June, A. D. 1911.

(Signed)

OTTO MASSEY,
Notary Public.

My commission expires March 4th, 1915.

Mr. West: You are willing to show us the figures, the receipts in each business, why do you object to showing the figures of investment in each business.

Mr. Brennan: We come here with all the figures in the gas business; if you want all these other figures we will submit them to you. You have been told by the witness again and again that he hasn't got the figures before him. There isn't any figures you can't have.

Q. There is only one thing I can see before this Board; you have testified in your judgment the business is worth \$500,000?

51 A. Several of our companies that are worth probably millions of dollars we have nothing to do with. The sub-lease is an absolute transfer to them and formally approved by the Secretary of the Interior. Under the law which I called your attention to they are separate and distinct from us as if we were in a separate state. And our 1/24 is paid by the pipe line company separate from them. One section alone I think would be worth over a million dollars that I know of. We have nothing there at all, and we don't even have a royalty from that. That happened to be the only section that was based on the one-eighth royalty. The total royalty paid by the sub-lease is 1/6. The Indian Territory Illuminating Oil Company separate from 30 or 40, or 50 oil companies, it is taken up and put on the carpet as to the value of its property when there are hundreds of companies doing business right under it.

Mr. Cruce: We are trying to get all of them here?

A. This is a public service investigation; they are not public service companies.

Q. I notice this statement, you have been having an annual loss running from \$5,753 up to \$15,915?

A. Yes, sir, on this gas business.

Q. And that loss has been kept up now for five years totalling over fifty thousand dollars?

A. It has been kept up for eight years.

Q. How does your company live under that sort of business?

A. I went over that very carefully. These lines were put in for the purpose of getting the leases; we are interested in all these leases to which these lines run. It is sixty miles from the north end of the lease to the south end. We are interested in these leases. A man say comes over here and takes a section and he wants to drill a well and he says "We will do it if you will give us gas."

Q. Is this company interested in that?

A. Yes, sir.

Q. When you get an interest in that and get your royalty where

do you put that; don't you credit any of that up against this loss you are entailing?

A. No.

Q. Where do you put that profit?

A. That is in the oil.

Q. In other words you charge up your expenses against your gas and credit profits to the oil?

A. Yes, sir. It would be hard for me to ascertain what it would be. That is the reason why I suggest to the Board that that business of moving those surface lines to one producer over here and then if he gets a dry hole we have to move it two or three miles running to properties — which we are interested, that it isn't a public service business.

Q. You contend we have no jurisdiction over these lines you lay out to those gas wells?

A. Yes, sir.

Q. Have you returned that to the local assessor for taxation?

A. We returned it to you. That question of analysis did not occur to me until afterwards, this last week; if it militates against us to return it to you we are willing he should tax us.

Mr. West: How much ought you to be assessed at?

A. All together?

Q. What ought this Board to assess you at?

A. I don't think that you ought to assess those lines that go through those producers.

Q. What ought this Board to assess; what property that belongs to your company?

A. If anything in Avant and Bigheart.

Q. What ought we to assess that at?

A. We will stand for any fair taxes. We won't question any amount.

Q. What ought that property be assessed at in Avant and Bigheart?

Mr. Brennan: What did you say you figured it at?

Mr. Leach: Total receipts?

Mr. West: No, net receipts.

Mr. Leach: Without taking into account the cost of gas it would probably amount to about \$1,200 to \$1,400.

Q. Taking into account the cost of gas what would it amount to?

A. Fifty per cent is usually considered, fifty per cent of the gross receipts is for the gas; where it is furnished on that kind of a basis.

Q. What do you think the property in Bigheart and Avant should be assessed at?

Mr. Brennan: I haven't the least idea, General.

52 Q. I have asked you three or four times, will you state a figure?

A. But I don't know.

Q. You have been given an opportunity haven't you?

A. Yes sir.

Q. How about the property that furnishes these farmers with gas. Will you state a figure for that?

A. I have given you the whole property.

Q. How about the property that furnishes Ochelata, will you state a figure for that?

A. No.

Q. How about the property that furnishes the Osage Indians, will you state a figure for that?

A. That is the same property.

Q. Will you state a figure for it?

A. No.

Q. How about the property that furnishes gas to Bartlesville, you will state a figure for that?

A. That is the same figure.

Q. Will you state a figure for it?

A. No. I don't want to invade your province entirely.

Mr. Cruce: Do you withdraw this first statement you filed with the Board or do you want to stand by that?

A. No, we didn't withdraw it. I only wanted to call your attention to the letter that went along with it.

Q. You have listed your property there at fifty two or fifty three thousand dollars?

A. Yes sir.

Q. And now you say the Board will not tax all of that property?

A. No.

Q. But you refuse to say what the property is worth that the Board should tax?

A. I told the General if the property was assessed at more than that return I wouldn't kick. We haven't kicked on our taxes. Why do you want some statement from me as to what I would do if I was in your place.

Q. I thought you came here to tell us what your property would be taxed at?

A. No, I came over to object to the assessment made in our absence.

Q. You don't propose to say at all what your property should be taxed at?

A. I covered the ground very fully.

Q. Probably I didn't hear you but I have never understood that you ever told this Board what your property should be taxed at?

A. Yes sir, we have got our returns here sworn to. They are before you.

Q. Is that what we should assess your property at, according to this report here?

A. It is the property in Avant and Big Heart that should be assessed if anything and I probably deny you have a right to assess it as a public service corporation at all. First I question the right of the Board to assess the company at all as a public service corporation; second, if it did have that right it should not assess the lines that run to the drillers; third, I introduced in evidence a statement

from an expert showing how much was in Avant and Big Heart; why do you want my evidence after I have introduced that.

Mr. West: You say you have lost for eight years?

A. Oh yes, I know that for every month for eight years.

Q. How much have you lost?

A. I don't know how much but I have furnished statements here in this matter. That will show more clearly than my testimony.

Q. Will you call my attention to the particular figures. I haven't any information on that subject that I know of.

A. All those figures on Exhibit B.

Q. Name them. I want to get at how much you say you have lost every month for eight years. I want to know how many dollars you have lost.

A. This statement shows a net loss for five years of \$50,000.

Q. For eight years how much is it?

A. We will furnish you the statement for the other three years.

Q. We have got to go ahead now. Is it about the same rate?

A. I should judge it must be.

Q. If this was \$50,000 for five years; about \$80,000 for eight years?

A. Yes sir.

Q. Did you make that back off of your oil property?

53 A. I don't know whether we have made it back or not.

Q. But you have kept on doing it for eight years?

A. Yes sir, we kept on developing those properties in that way.

Mr. Cruce: Are you the man who made the original return Mr. Leach?

Mr. Leach: Yes sir.

Q. Is this affidavit of yours correct?

A. I think so in connection with my explanation of it.

Mr. West: Will you object if we assess you at \$300,000?

Mr. Brennan: Yes sir.

Q. I want to explain to you why I suggest that. You testified that the entire property is worth half a million dollars?

A. I testified that in my opinion it ought to be worth that.

Q. Now your manager has shown that there is an expense of \$3,000 a month to the gas business and \$7,000 a month to the oil business and in the oil business is included general expenses, the amount of which I can't get from him and in the absence of other light I am inclined to believe it is half and half. Now then if I divide the property according to expenses the gas property ought to be worth a quarter of a million dollars.

A. You are not doing that correct because I told you that most of the oil business was receipts from royalties amount- to a great deal with reference to which there was no expenses.

Q. Amounted to how much?

A. Well in the last eight years about \$600,000.

Q. \$600,000 in eight years?

A. It is running over that now. It is running \$125,000 a year. That is net profit.

Q. How much is that from wells developed, opened up by your gas system?

A. Probably half.

Mr. Leach: Not hardly.

Mr. West: As much as \$40,000 a year from wells that were opened up under your gas system?

Mr. Brennan: Perhaps so.

Q. In this \$40,000 a year in the wells developed by your gas system how much of that \$40,000 shall we estimate is received due to the fact that you have been furnishing them gas?

A. I don't know. Could you think of estimating that yourself if you knew all the facts?

Q. I don't know the facts.

A. We simply furnish the fuel on the leases. It might be furnished from some other source or some other way or the power might be given in some other way and if you furnish the fuel to a lease and it produces 100 barrels a day how much of the 100 barrels a day would come through your efforts.

Q. I would judge from your case that at least ten thousand a year because you wouldn't keep on losing it unless you are making it back. We can identify at least $\frac{1}{4}$ of it coming back to you in that way. I want to know how much more. You have no answer to make to that?

A. Oh pshaw.

Q. Have you any other answer?

A. Nothing unless you get my photograph in there.

Q. Is there anything else—you see the line I am trying to follow—is there any other information I ought to have either on this line or any other line?

A. We offered you certain information which we are going to send to you from the oil—a copy of our books.

Q. Is there anything else you can furnish us now?

A. Nothing that I have here.

Q. Is there anything else you care to present now?

A. No, I don't think so.

Mr. Harrison: This is an incorporated concern isn't it?

A. Yes sir.

Q. What was the purpose for which it was incorporated?

A. For the purpose of developing oil territory and gas territory.

Q. It is not for furnishing gas in any instance?

A. I will send you a letter with reference to that.

Mr. Cruce: You keep the books do you Mr. Leach?

A. Well no I don't keep the books. We have a book-keeper.

Q. Now this statement shows disbursements for the year \$41,780. Can you tell the Board what items make up that \$41,000?

A. I could not. I wasn't in the office when that was made up.

54 Mr. Brennan: When this letter was sent in we went on drilling those wells and we got those dry holes.

Q. In your letter of explanation you say against this \$35,947 we

have \$14,714 as cost of maintenance; is that the cost of maintaining your gas plant?

— Leach: Yes sir.

Q. If you didn't charge all this extra stuff up against it you would have a profit then of over \$21,000?

A. Taking no account of the actual cost of gas. You see our gross receipts are not profits. It would be proper to allow something for the cost of gas.

Q. Do you think it would be proper for a farmer out here if he went out and spent \$5,000 this year and didn't raise anything to charge that up against his farm?

A. That is a different situation. If you are selling a property that cost you a certain price say you are selling it for fifty cents and it cost you 25 cents, then your profit would only be the difference between your cost and your gross receipts. Now this gas cost us something. It cost us something originally and there should be some charge against that. As I stated in my other testimony in relation to Bigheart that it is very customary to allow fifty per cent for the cost of gas against the gross receipts. In other words it is a very good rule that gas companies transporting gas furnished to local companies at all the way from forty to sixty per cent of their gross receipts.

Q. How long do your gas wells last?

A. About four years.

Mr. Brennan: All of that?

A. I was going to explain that. That will depend somewhat upon the location of the gas well. If they should be located in among developments where oil is being found it will run out so much quicker.

Mr. Cruce: Now you say by careful computation we find the wells in service to operate this gas deteri-rated during the year 28 per cent. and that 28 per cent of your original cost. That amounted to \$6,874 so you charged that against it?

A. Yes sir.

Q. Do you include in that the cost of your pipe?

A. Yes sir.

Q. Is that pipe worth anything?

A. Well, yes, it is worth something.

Q. Did you take into account in that, in this charge?

A. No. In addition to this we spent over \$15,000 in drilling wells to increase our gas production.

Q. When you have charged all of that in you have \$36,758 of expenses against \$35,947 of receipts or a difference of about \$800. This statement here shows \$5,700.

A. That statement was prepared under the direction of Mr. Brennan. I suppose that included the office expenditures.

Mr. Brennan: That included the wells drilled when you wrote your letter. We included it right down to date.

Mr. Cruce: How many months has that been you have been spending this extra \$5,000. When was this statement made up?

A. This statement was made up a few days ago.

Q. And this other was made up?

A. I think it was in March.

Q. That is about five months? Haven't you received anything at all during that five months?

A. Yes sir.

Q. You lack 46 cents showing as much receipts in this last statement as you did in the former?

A. I can take that back and explain it all.

Mr. Bryan: How many wells have you drilled in the past three months?

A. Two I think.

Q. When you drill these wells if you happen to strike oil what do you do with that, charge the expenses of that to the oil company?

Mr. Brennan: That belongs to the other company.

Mr. Cruce: And the expense of it goes to the other company?

A. Yes sir.

Q. If you go out drilling for oil and strike a dry well do you charge that up to this gas account?

Mr. Leach: No. We have three strings that we have been running regularly for a year that are drilling for gas and we are not making any locations where we think the prospects are in favor of
55 oil. They are primarily operating for gas; however, if we accidentally open a pool of oil we wouldn't abandon a well on that account but the probabilities are it would be turned over to the party holding the oil right and he would reimburse us for the amount we had expended.

Q. On that one well?

A. On that one well.

Q. All of the profit you would get out of that would go to the oil and all of the loss you would entail would go to gas?

A. But the oil wouldn't belong to us. You see in a large per cent the oil belongs to the sub-lessee, the gas belongs to us. We drilled jointly on these leases; the man who holds the oil right if he drills a gas well he turns it over under the terms of our lease to us at actual cost, and if we drill an oil well we turn it over to him for actual cost.

Mr. Brennan: It is all sub-leased with the exception of 32 which has about 1200 acres; there are about 20,000 acres over here (referring to map) which belongs to the company; we drill on sub-leased property. The oil wells belong to the sub-lease company.

The following statement was read into the record regarding the Indian Territory Illuminating Oil Company's property being assessed by the State Board of Equalization:

"To the State Board of Equalization Having Power to Assess Public Service Corporations under the Constitution:

In the Matter of the Assessment of The Indian Territory Illuminating Oil Company.

The Indian Territory Illuminating Oil Company respectfully insists before this Honorable Board as follows:

1st. That no part of the property of said Company is assessable by this Board as being used in Public Service, and that in the conduct of no part of its business is said Company a Public Service Corporation.

2nd. That the business of said Company is confined to that part of Oklahoma which is known as the Osage Reservation, being the property of the Osage Tribe of Indians; that the business of said Company is wholly conducted under and by virtue of a deed, license or grant by the United States Government to said Company, renewed by Act of Congress of March 3rd, 1905—specifically mentioning said Company by name and endorsing and continuing its said lease or grant; that said lease is for the production of petroleum and natural gas on said reservation only, and that the Osage Tribe of Indians, as a tribe, is a party of the first part to said lease, and that said petroleum and natural gas is wholly tribal property, was tribal property at the time of said grant, and by the Osage Allotment Bill of June 28th, 1906, was ordained to be continued as tribal property for twenty-five years; that all the operations of said Company on said reservation, under and by virtue of said lease, are by virtue of said grant, and the rules and regulations of the Honorable Secretary of the Interior of the United States Government, a copy of which is hereto annexed and made a part hereof; and that the officers and agents of said United States Government, together with their Inspectors of Gas operation, are actually in charge of the yield operations of said Company, representing said Government as the guardian of said tribe of Indians, and that this company is subject to the provisions and conditions of said lease, and to the rules and regulations of the Federal Government in that regard. A copy of said lease or grant has heretofore been filed with this Honorable Board in these proceedings.

3rd. That the small surface gas lines embraced in this inquiry and belonging to the Company are a very small part of the business of the Company—its said business being primarily, and almost wholly, the production of petroleum or oil. Said lines were built and extended from time to time on the surface of the ground for the purpose of temporarily conveying gas to producers of oil—all of whom were, and are, sub-lessees of this Company, and in each of which said

sub-lessees this Company has always had, and now has, a substantial interest—and the furnishing of said gas was for the purpose of promoting the development of the property of this Company, as aforesaid, and not to realize a separate profit from the conduct of said gas business; that said lines are taken up and moved from time to time according to the exigencies of the

business of oil development or the drilling of wells. It is a fuel business, to supply power in the drilling of wells, for which a flat rate is charged entirely inconsistent with the quantity of gas used.

4th. That said business has always been, and is now, conducted at a loss by said Company, and would not be carried on were it not for the interest that said Company has in the said sub-leases reached by said lines.

5th. That after said system was so instituted, from time to time this Company furnished the little town- of Bigheart and Avant with gas for domestic purposes, at the earnest request of the few inhabitants thereof. This Company has no franchise, permit or contract from or with said towns; that the furnishing thereof is a part of the same system or purpose as heretofore set forth, for the reason that said settlements, or towns, are located in and near the oil operations, and are settled by those who are interested in the drilling, or accommodate those who reside on the leases and are engaged in the drilling in various ways. Said towns are located wholly in the Osage Reservation, and the receipts from service therein are wholly insufficient to pay for the investment and cost of maintenance.

6th. That nearly four-fifths of the gas lines and property returned by the officers of this company to this Board is that which is embraced in the service of gas and drillers and producers of oil, and that said lines were erroneously included in the return, and the Company respectfully insists that, in any event, that part of said lines which is used in the lease operations under the original lease should not be included as Public Service under the Laws of Oklahoma.

7th. That said Company also furnishes gas to the Ochelata Gas and Water Company, but that this Company does not serve the inhabitants of Ochelata, and does not conduct its lines in that regard beyond the line of said Reservation, but delivers said gas at the line, for the reason that said point is near one of said surface lines, but that no receipts have ever been received therefrom during the last year and more, and that this Company would not continue the same were it not for the resulting harm and suffering that might be caused the people of Ochelata.

Through these surface lines said Company also is now receiving about two hundred dollars a month for gas from the Bartlesville Gas and Oil Company.

8th. That no part of said surface line system could be used in conducting any substantial quantity of gas to any distance to furnish larger consumption -or cities.

9th. That except as aforesaid, the business of said Company is the production of oil itself and the obtaining of a royalty from sub-leases and from oil operations thereon; that such profit as the Company makes is derived wholly from its oil business, and that its capital stock represents its oil business, but that said capital stock has no market value, and has been offered as low as fifteen cents per share. That the capital stock of said Company does not represent an actual cash investment equal to the face value of the stock, but that said

stock was issued to the former owners of the lease from the Government in payment for their properties, being said lease-hold.

10th. This Company respectfully insists that the sworn return to this Board should not be changed in any event and that the assessed value of the property, as herein indicated, should not be raised except upon evidence that said return is incorrect; and that said return was raised without notice to said Company.

11th. That the figures to which said assessment against said Company was raised are erroneous, inequitable and unjust to such an extent that it will result in confiscation of the property of this Company if this Company were compelled to pay the taxes based upon said assessment, and this Company will be absolutely unable to perform the duties of said lease or contract with the United States Government, in the event that such taxes should be enforced or should be paid, and that, therefore, said tax would impose a burden upon Commerce with an Indian Tribe.

12th. That the value of the property of this Company, including all its oil business and properties, is far less than the figure to which this assessment has been raised. That the lease of this Company expires in five years, and there is no provision for a renewal thereof.

13th. That this Company is now paying, and has heretofore paid ever since Statehood, taxes on all its oil production, under the gross production tax in Oklahoma, and in the same manner it is paying, and has heretofore paid, a gross production tax on the gas as produced, and also a tax on the same gas when transmitted through pipe lines, and also a tax upon the same pipe lines; that every piece and part of said Company's property is taxed under some law of Oklahoma, and that its gross receipts are reached by the gross production tax.

14th. That such franchise, occupation and business as is owned or engaged in by said Company is, by virtue of said grant, license or lease from the Federal Government, and said franchise, right or occupation can not be taxed by the State of Oklahoma.

(Signed)

JOHN H. BRENNAN.
KENNETH C. CRAIN.

STATE OF OKLAHOMA,
Oklahoma County, ss:

John H. Brennan, being first duly sworn, deposeth and saith that he is a stock holder, a director of, and attorney for the above named Indian Territory Illuminating Oil Company; that he has read the foregoing statement, knows the contents thereof, and that the matters and things therein set forth are true to his personal knowledge.

(Signed)

JOHN H. BRENNAN.

Subscribed and sworn to before me this, the 29th day of June, 1911.

(Signed)

EUGENIA DAVIS,
Notary Public.

My commission expires, June 25th, 1914.

(The witnesses were here excused and no more testimony was taken in the case of the Indian Territory Illuminating Oil Company.)

58 Exhibit A of the Indian Territory Illuminating Oil Company at the hearing of June 29th, being a map of that part of Osage County, Oklahoma, comprised in the said Company's lease, is a part of the record in the said Company's first appeal in the matter of its assessment, No. 2845 in the Supreme Court of Oklahoma, and cannot be duplicated in this record.

Witness my hand, this 30th day of October, 1911.

LEO MEYER,

*State Auditor, ex-Officio Secretary
of the State Board of Equalization.*

59 (EXHIBIT "A" TO STATEMENT OF JOHN H. BRENAN.)

Regulations Governing the Leasing of Lands for Oil and Gas on the Osage Reservation, Oklahoma, Under the Act of March 3, 1905.

The following regulations are hereby prescribed for the purpose of carrying into effect the provisions of the act of Congress approved March 3, 1905 (Public. 112), which provides:

That any allotment which may be made of the Osage Reservation in Oklahoma Territory shall be made subject to the terms and conditions of the lease herein authorized, the same being a renewal as to a part of the premises covered by a certain lease dated March sixteenth, eighteen hundred and ninety-six, given by the Osage Nation of Indians to Edwin B. Foster and approved by the Secretary of the Interior and now owned by the Indian Territory Illuminating Oil Company under assignments approved by the Secretary of the Interior, which said lease and all subleases thereof duly executed on or before December thirty-first, nineteen hundred and four, or executed after that date based upon contracts made prior thereto, and which have been or shall be approved by the Secretary of the Interior, to the extent of six hundred and eighty thousand acres in the aggregate, are hereby extended for the period of ten years from the sixteenth day of March, nineteen hundred and six, with all the conditions of said original lease except that from and after the sixteenth day of March, nineteen hundred and six, the royalty to be paid on gas shall be one hundred dollars per annum on each gas well, instead of fifty dollars as now provided in said lease, and except that the President of the United States shall determine the amount of royalty to be paid for oil. Said determination shall be evidenced by filing with the Secretary of the Interior on or before December thirty-first, nineteen hundred and five, such determination; and the Secretary of the Interior shall immediately mail to the Indian Territory Illuminating Oil Company and each sublessee a copy thereof.

The said act of March 3, 1905, renews and extends the—

said leases and all subleases thereof duly executed on or before December thirty-first nineteen hundred and four, or executed after that date based upon contract made prior thereto, and which have been or shall be approved by the Secretary of the Interior, to the extent of six hundred and eighty thousand acres in the aggregate * * *

Section 1. The original lease and all subleases and assignment thereunder provided for by the act of Congress of March 3, 1905, above referred to, are, when approved by the Secretary of the Interior, extended for a period not longer than March 16, 1916.

Section 2. All subleases or assignments made hereafter must be submitted to the U. S. Indian Agent, Osage Agency, Pawhuska, Oklahoma, for consideration and transmittal to the Department within thirty days from and after the date of execution of the instrument, and all such subleases and assignments which have been heretofore executed must be submitted to the said agent within thirty days of the approval of these regulations. No such sublease or assignment presented after the time herein designated will be received by the agent or transmitted to the Department or regarded as having any effect whatever.

Section 3. All subleases or assignments or instruments operating as assignments to be presented for the approval of the Secretary of the Interior shall be submitted to the United States Indian Agent, Osage Agency, Pawhuska, Oklahoma, for transmittal by him with his recommendation to the Commissioner of Indian Affairs, for the consideration of the Department.

Section 4. All subleases or assignments must be made in triplicate, filed with the Indian Agent, Osage Agency, and, when approved, one copy to be immediately filed in the office of the Commissioner of Indian Affairs, one to the United States Indian Agent, Osage Agency, Pawhuska, Oklahoma, and one to be delivered to the lessee or assignee.

Section 5. All sublessees or assignees will be required to furnish a bond of not less than \$3,000, and larger amounts where recommended by the Indian Agent, executed by some responsible surety company, guaranteeing the payment of all rents or royalties at the time and in the manner specified in the sublease or assignment, and the performance of all covenants and agreements named in the indenture to be paid and performed by the lessee.

Section 6. In order that the Department may have definite information before it concerning lessees in oil and gas leases covering lands in the Osage Nation, it is required that corporation lessees must furnish a certified copy of their articles of incorporation and affidavits covering the following points, to be submitted to the said U. S. Indian Agent, Osage Agency, Pawhuska, Oklahoma, with the triplicate copies of subleases or assignments, heretofore referred to in section 4:

(a) A list of officers and directors.

(b) State the number of shares of stock issued, and by whom held, giving post-office addresses of stockholders, and specifically stating the amount of cash paid into the treasury on each share sold;

or if paid in property, state kind, quantity, and sum paid per share.

59b (c) Of the stock sold, how much per share remains unpaid and subject to assessment?

(d) How much cash has the company in its treasury and elsewhere? Certificates by officers of the banks should be furnished showing the amount deposited therein to the credit and subject to the check of the company.

(e) What property, exclusive of cash, is owned by the company and its value?

(f) What is the total indebtedness of the company, and specifically the nature of its obligations?

(g) State what experience the officers of the company or others connected with or employed by it have had in the production of petroleum and natural gas, or in any other business.

Affidavits should also be furnished by individual lessees showing their financial responsibility, the amount of cash on hand available for mining operations, and their experience in the oil and gas business or other business. They should also submit affidavits by bank officers showing the amounts deposited to their credit.

All required information relative to subleases or assignments shall be furnished within fifteen days from the date of the letter of the U. S. Indian Agent, Osage Agency, requesting it.

Section 7. There shall accompany each sublease or assignment a statement under oath by the applicant that such sublease or assignment is not made for speculation, but in good faith and for mining the mineral specified, and such persons or corporations must furnish such other information as may be desired by the United States Indian Agent, Osage Agency, Pawhuska, Oklahoma, or other authorized officer of the Interior Department, regarding their prospective operations. Subleases or assignments will not be approved where the parties themselves do not intend to conduct the operations on the land.

Section 8. All subleases or assignments must accurately describe the lands, and specify the mineral to be mined, the rents or royalties, when the same are to be paid, and must contain a provision to the effect that if the lessee shall fail to pay the rents or royalties, or any part thereof when due, or shall fail to faithfully comply with the terms and conditions of the lease, such failure shall constitute a forfeiture of the sublease or assignment and all improvements placed upon the land by the lessee, the Osage Nation shall be entitled to immediate possession of the leased lands and the improvements located thereon, and shall in all respects be subject to the provisions and penalties of the original lease now owned by the Indian Territory Illuminating Oil Company.

59c Section 9. All lessees must agree to allow the lessor and his agents and any authorized representative of the Interior Department, from time to time, to enter upon and into all parts of the leased premises for the purposes of inspection, and agree to keep a full and correct account of all of their operations, and make report thereof, promptly at the end of each month to the lessor or to

such persons as may be designated by the Secretary of the Interior, and their books shall be open at all times to the examination of such officers of the Department as may be instructed in writing by the Secretary of the Interior to make such examination. All subleases or assignments must be executed in the presence of two subscribing witnesses, the post-office address of each party in interest must be shown by the lease which is sought to be approved, and the post-office addresses of the subscribing witnesses must appear upon the papers.

Section 10. All rents, royalties, or payments accruing under any lease, sublease, or assignment, to the Osage tribe of Indians, which have been approved by the Secretary of the Interior, or which require his approval, shall be paid to the United States Indian Agent, Osage Agency, Pawhuska, Oklahoma, or to such other officer or person as the Secretary of the Interior may designate.

Section 11. With the consent of the United States Indian Agent, Osage Agency, Pawhuska, Oklahoma, lessees may make arrangements with the purchasers of oil for the payment of royalty to the U. S. Indian Agent by such purchasers, but such arrangement, if made, shall not operate to relieve the lessee from the responsibility of the payment of the royalty should such purchaser fail, neglect, or refuse to pay same when it becomes due, but in such cases no oil shall be extracted from such lands or removed therefrom until such arrangements have been perfected with the said Indian Agent.

Section 12. No lease, sublease, or interest therein, by working or drilling contract or assignment, or otherwise, or the use thereof, directly or indirectly, shall be valid or recognized, without the consent of the Secretary of the Interior, nor shall any operations thereunder be commenced until after approval by him; and if at any time the Secretary of the Interior is satisfied that the provisions of any lease or that any of the regulations heretofore or that may hereafter be prescribed, have been violated, he shall have authority, after ten days from notice to the parties, to cancel and annul such lease, without resorting to the courts and without any further proceedings, and the lessor shall be entitled to immediate possession of the lands.

Section 13. These regulations shall be applicable to all leases, subleases, or assignments heretofore made, as well as to those that may hereafter be made.

59d

Rules and Regulations for Operating Properties.

Section 1. All persons or corporations operating under these regulations, before commencing operations on any lands allotted to Indians and during such operations, shall duly compensate such Indians for damages done to the surface of the land in cultivation, and where such can not be satisfactorily adjusted, the matter shall be investigated by the U. S. Indian Agent, and such payments as he may determine shall be made, subject to appeal from his decision to the Commissioner of Indian Affairs.

Section 2. Lessees shall not be allowed to drill oil or gas wells within 200 feet of the division line between the lands covered by their

leases and adjoining lands, whether the latter lands are leased or unleased, allotted or unallotted, nor shall any wells be drilled within 35 feet of any section line on the Osage Reservation.

Section 3. All persons or corporations drilling wells under approved leases, subleases, or assignments upon the Osage Reservation shall keep a true and correct record of each well, including the log of the same, and shall furnish to the United States Indian Agent, Osage Agency, Pawhuska, Oklahoma, a copy of said log not later than fifteen days after the said well has been drilled, duly certified to under oath, by the driller and operator or his representative, and the said operator or his representative shall furnish a further statement under oath as to whether the rig timbers were procured on the Osage Reservation, and if so, state the name of the citizen, or other person, from whom the said rig timbers were purchased, and shall also furnish any other information the said Agent may desire relative to the drilling of said well, or the procurement of timber used in connection with such operation.

Section 4. All lessees or operators for the mining and production of petroleum and natural gas on the Osage Reservation shall, in a practical and workmanlike manner, plug all of their dry and abandoned oil and gas wells at a proper depth with wood or sediment in a manner to exclude all fresh or salt water from the oil or gas bearing rock or sand before the casing is drawn from the said well in a manner satisfactory to the United States Indian Agent for the Osage Indians, and to this end the following general regulations must be followed, but the lessee will be required to exercise his judgment and put in such other necessary plugs as will effectually protect all stratas of oil or gas bearing rock or sand from fresh or salt water, so that the results contemplated will be obtained, and the said lessee or operator shall furnish an affidavit by himself or his representative and one other person, who assisted in the plugging of said well, stating in detail the manner in which the said well was plugged, and shall also furnish a log of the well, certified to under oath, by himself or his representative and the driller, the said log to be attached to the
59e affidavit as to the plugging of the well, and they together shall be filed with the U. S. Indian Agent, Osage Agency, Pawhuska, Oklahoma, not later than fifteen days after the said oil or gas well has been abandoned.

Before the casing shall be drawn from any well for the purpose of abandonment thereof, which has been drilled into any oil or gas bearing rock or sand, it shall be the duty of the lessee or operator having the custody or control of such well at the time of such abandonment, to properly and securely stop or plug the same in the following manner:

Such hole shall first be solidly filled from the bottom thereof to a point at least twenty-five feet above such gas or oil bearing rock or sand with sand, gravel, or pulverized rock; immediately on the top of such filling shall be seated a dry pine plug, not less than two feet in length, having a diameter not less than one-fourth of an inch less than the inside diameter of the casing in such well; above such wooden plug such well shall be solidly filled for at least twenty-five

feet with the above-mentioned filling material, immediately above which shall be seated another wood plug of the same kind and size as above provided, and such well shall again be solidly filled for at least twenty-five feet above such plug with the said filling material. After the casing has been drawn from such well there shall be immediately seated at the point where such casing was seated a cast-iron ball or tapered wood plug at least two feet in length, the diameter of which ball or the top of which plug shall be greater than that of the hole below the point where such casing was seated, and above such ball or plug such well shall be solidly filled with the aforesaid filling material for at least a distance of fifty feet.

Section 5. All lessees and operators upon the abandonment or ceasing to use and operate any well which shall have been drilled for oil or gas, he or they shall plug the same so as to completely shut off and prevent the escape of all water therefrom which may be impregnated with salt or other substances which will render such water unfit for use for domestic, steam making, or manufacturing purposes, and in such manner as to prevent water from any such well injuring or polluting any spring, water well, or stream which is or may be used for the purposes aforesaid.

Section 6. All "B-S" or other refuse from tanks and wells shall be drawn off in proper receptacles at a convenient distance from the tanks or wells, to the end, that it may be disposed of by being burned, and in no case or circumstance shall it be permitted to flow over the surface of the land to the injury of any surrounding property or the pollution of any stream.

Section 7. All lessees and operators in possession of any well producing natural gas on the Osage Reservation, in order to prevent the said gas from wasting by escape, shall within ten days after the approval of these regulations, and thereafter within five days after penetrating the gas bearing rock or sand in any well drilled, shut in and confine the gas in said well until such time as the gas therein shall be utilized for light, fuel, or steam power; provided that this regulation shall not apply to any well that is operated for oil when the production of the oil has a greater available market value than the production of gas therefrom, or during the process of drilling, with reasonable diligence, or when oil is found in a lower stratum of sand and the well is operated as an oil well and the gas from the upper stratum of sand is cased off. And said lessees and operators shall pay to the U. S. Indian Agent, Osage Agency, Pawhuska, Oklahoma, the sum of \$10.00 per day for each well during the time such well or wells are allowed to go uncontrolled or uncared for, as directed by this section, unavoidable accidents excepted.

Section 8. All lessees, and those operating under them, on the Osage Reservation, using natural gas for fuel in steam boilers, shall provide the same, within thirty days after the approval of these regulations, with what is known as a "Fulton," "Northrup," or "Gillfillen" boiler regulator, or other regulator equal thereto, so connected to the boiler that the steam pressure will regulate the flow of gas.

Section 9. All lessees, and those operating under them, who are

or may hereafter be using natural gas for outside illumination upon their premises, shall not use the said gas for illuminating purposes, other than in what is known as "Storm" burners, or burners which consume no more gas than the said "Storm" burners, and anyone using such gas in the open air or in and around derricks, shall turn off said gas not later than 8 o'clock in the morning of each day such lights are burning or used, and shall not turn on or relight the same between the hours of 8 o'clock a. m. and 5 o'clock p. m., and the U. S. Indian Agent, Osage Agency, Pawhuska, Oklahoma, shall be the judge as to the number of lights permitted upon and around any lease, subject to appeal to the Commissioner of Indian Affairs.

Section 10. Any gas well upon the Osage Reservation which has been placed in service commercially, and for which royalty is being paid, will not be considered out of service until due notice has been served on the U. S. Indian Agent, Osage Agency, Pawhuska, Oklahoma, of the same, and that the said well has been disconnected from all service lines. The mere turning of a valve will not be considered sufficient to take a well out of service.

Section 11. The regulations shall be applicable to leases, subleases, and assignments heretofore approved, as well as those that may be hereafter approved, and for any failure on the part of the lessee to comply with any rule or regulation, or any obligation 59g in his lease, sublease, or assignment, the Secretary of the Interior may revoke his approval of such lease, after due notice to the lessee.

Section 12. Wherever in the drilling of oil or gas wells under approved oil and gas mining leases covering lands within the Osage Reservation both gas and oil are encountered in commercial quantities, and the gas is found in a formation sufficiently above the oil-bearing sand to permit of the same being separated from the oil by casing, such gas shall be so separated from the oil and securely shut in and preserved, and shall not be permitted to flow with the oil through the same string of casing.

Department of the Interior.

Office of Indian Affairs.

April 8, 1907.

The foregoing regulations are respectfully submitted for the approval of the Secretary of the Interior.

C. F. LARRABEE,
Acting Commissioner.

Department of the Interior.

April 17, 1907.

Approved:

JAMES RUDOLPH GARFIELD,
Secretary.

60 That thereafter, and on the 17th day of July, 1911, the following proceedings were had before said Board of Equalization relating to the assessment of the said Company, to-wit:

61 The State Board of Equalization met at ten o'clock a. m., Monday, July 17, 1911, with the following members present:

Governor Lee Cruce, Chairman.

State Auditor Leo Meyer, Secretary.

State Treasurer Robert Dunlop.

Secretary of State Ben F. Harrison.

President Board of Agriculture, G. T. Bryan.

Attorney General Charles West.

State Examiner and Inspector Charles A. Taylor absent from the city under the direction of a physician on account of illness.

* * * * *

Mr. Crane (Representing the Indian Territory Illuminating Oil Co.):

I would like to know if the Board at this time is prepared to take any further steps in connection with the assessment of the Indian Territory Illuminating Oil Company, or is there anything we can do to enlighten the Board any further.

Mr. West: I don't remember how that stands.

Mr. Crane: It stands on the hearing had on June 29th, with the manager of the company, counsel of the company and one director present, both subject to examination and presented exhibits and oral testimony, Mr. Brennan and Mr. Leach.

Mr. West: During the examination of the Indian Territory Illuminating Oil Company there were a great many questions asked of Mr. Leach and Mr. Brennan, and I still want an answer to all of those that are not answered. It seems to me there were hardly any of them answered.

Mr. Crane: There were several statements that were to be taken up by letter, and several of them you wanted at that time, and if the Board still wants that information we will be glad to furnish it. We understood nothing further after that; thought it would be accepted. We are entirely open to all inquiry the Board desires to make.

Mr. West: I think the record that was taken at the time will show you better what we desire to know. I forget now about it. Mr. Orr has told me something about it, but my recollection is that this is the company that has that oil business and that gas business in the Osage Nation.

Mr. Crane: Yes, sir.

Mr. West: And there was a great deal I desire to know and asked about at the time which it seems to me was unanswered and as long as the Board is in session I will be in favor of hearing anything else you have to say about those matters.

Mr. Crane: Certain questions about the oil business which were not answered at that time if the Board desires we will be glad to present to you.

Mr. West: Can you do it to-day?

Mr. Crane: It will be impossible to do it to-day.

Mr. West: Can you do it on the second of August?

Mr. West: I move the Board reconsider anything further the Indian Territory Illuminating Oil Company desires to present on the second of August, 1911.

Mr. Dunlop: Second the motion. Motion carried.

* * * * *

62 In the Supreme Court of the State of Oklahoma.

In the Matter of the Assessment of The Indian Territory Illuminating Oil Co.

Reporter's Certificate.

B. R. Simpson, of lawful age, being first duly sworn, on oath says: That he is one of the official stenographers and reporters of the proceedings of the State Board of Equalization; that in such capacity, he attended the meetings of said Board held on the 29th day of June and the 17th day of July, 1911, and faithfully and correctly reported the proceedings at said meetings in shorthand; and that the foregoing pages, headed and dated as of those days, contain a full, true, correct and accurate transcript of his shorthand notes of the proceedings had on said days relating to the assessment of the Indian Territory Illuminating Oil Company, and a full, true, correct and complete record of all oral and written testimony, and of all exhibits, statements and pleadings introduced thereat in connection with the assessment of said Company, and of the rulings and orders of said Board in relation thereto.

B. R. SIMPSON,
Official Reporter.

Subscribed and sworn to before me, this 30th day of October, 1911.

[SEAL.]

E. F. KEYS,
Notary Public.

My commission expires January 4, 1915.

63 That thereafter, and on the 2d day of August, 1911, the following proceedings were had before said Board relative to the assessment of said Company:

64 The State Board of Equalization met at two o'clock p. m., August 2nd, 1911, with all members present.

The following proceedings were had:

* * * * *

Mr. K. C. Crain representing the Indian Territory Illuminating Oil Company appeared before the Board and made a statement relative to the assessment of that company, and offered the affidavit of Mr. Charles F. Leach, manager of the above named company as an exhibit in these proceedings, which was marked Indian Territory

Illuminating Oil Company's Exhibit A-1, and made a part of the record herein and attached hereto. Also offered as an exhibit the exact copy of the original lease of said company above mentioned, which was marked Indian Territory Illuminating Oil Company's Exhibit B-1 attached hereto and made a part of the record in this case.

* * * * *

65 (Before the State Board of Equalization of Oklahoma.)

STATE OF OKLAHOMA,

Washington County, ss:

Charles F. Leech, of lawful age, being first duly sworn, on oath says: That he is the manager of the Indian Territory Illuminating Oil Company, a corporation organized under the laws of the State of New Jersey, doing business in the State of Oklahoma; that as such manager he has charge of the books and records and business of said company; and that from said books and records he has prepared and presents herewith the following figures and statements, which are hereto attached and made a part hereof, under the exhibit numbers indicated, i. e.:

Exhibit A. Statement of receipts and disbursements from oil and gas prior to Jan. 1, 1907.

Exhibit B. Receipts and disbursements in oil business, Jan. 1, 1907, to May 31, 1911.

Exhibit C. Receipts and disbursements in gas business prior to Jan. 1, 1907.

Exhibit D. Cost of gas wells.

That said exhibits are substantially correct and accurate; that an exactly accurate and absolutely complete statement to cover minor items not included therein, would require months of labor, in an extensive auditing of said company's books and records, but that said exhibits, figures and statements, with the figures and statements heretofore introduced before said Board, show comprehensively the business of the said company, and that any changes which a more exact and complete statement might make would not affect materially the general showing of the business of the said company; and further affiant saith not.

CHAS. F. LEECH.

Subscribed and sworn to before me this 1st day of August, A. D. 1911.

[SEAL.]

THOS. F. GORMAN, *Notary Public*.

My commission expires Jan. 25th, 1912.

Exhibit A-1.

Statement of Receipts from Oil and Gas.

Prior to January 1, 1907.

	Receipts.		Disbursements.	
ality	266,722 70		.....
32.....	33,449 46		19,765 09	
2.....	979 37		6,627 54	
164.....	.....		661 66	
293.....	726 89		5,913 76	
	<u>301,928 42</u>		<u>32,968 05</u>	
.....	50,901 32		57,413 70	
	<u>50,901 32</u>		<u>57,413 70</u>	

Expenses of Carrying on Business.

Same Period.

gal Expense	34,134 76	
neral Expense	45,166 44	
x	3,685 90	
orse, Buggy & Harness....	821 78	
w York Office.....	1,417 44	
rtlesville Office	13,585 57	
" " Rent.....	1,691 00	
	<u>100,501 29</u>	
	352,829 74	
	<u>190,883 04</u>	

Exhibit A.

*Summary of Receipts and Disbursements in the Oil Business
as Shown by Detailed Statements Attached.*

	Receipts.	Disbursements.	Profits.
or the Year 1907.....	99,266 17	42,602 97	56,663 20
" " 1908.....	135,759 66	66,840 13	68,919 53
" " 1909.....	93,157 64	40,634 77	52,522 87
" " 1910.....	118,687 49	36,593 19	82,094 30
" " 1911.....	.....	.....	.....
an. 1 to May 31.....	82,524 61	27,745 82	54,778 79
Totals.....	<u>529,395 57</u>	<u>214,416 88</u>	<u>314,978 69</u>

Exhibit B.

Statement of Receipts and Disbursements in Oil Business for Year 1907.

Lot 32.

	Receipts.	Disbursements.
Oil, Lot 32.....	3,433 77	
Lot 32, Expense.....	394 90	3,731 53
" 32, Drilling.....		2,602 40
" 32, Torpedo.....		382 00
" 32, Supply.....		2,836 45
" 32, Tank.....	750 93	2,238 07
" 32, Bldg. & Rig.....	325 00	1,047 55
" 32, Water Plant.....		519 81
		<u>13,357 81</u>
Royalty, Oil.....	4,904 60	
	<u>93,021 40</u>	<u>6,506 74</u>
		<u>6,506 74</u>

Lot 293.

Lot 293, Oil.....	1,324 99	
" 293, Expense.....		737 43
" 293, Supply.....		208 91
" 293, Bldg. & Rig.....		15 50
		<u>961 84</u>
General Expense.....	1,324 99	
Tax.....		10,912 81
New York Office.....		3,810 35
Furniture & Fixtures.....		1,097 91
Legal Expense.....		306 36
Bartlesville Office.....		8,968 22
		<u>6,549 86</u>

Horse, Buggy & Harness.....	456 85		
Bartlesville Office Rent.....	562 50		
		22 78	
2/3 of this expense chargeable to oil.....		15 18	21,776 58
Totals for year 1907.....		99,266 17	42,602 97

69 *Statement of Receipts and Disbursements in Oil Business for Year 1908.*

Lot 32.

Lot 32, Oil	46,923 56		
" 32, Expense	429 00		10,448 45
" 32, Supply	2,068 86		13,924 00
" 32, Bldg. & Rig.....	.....		3,922 68
" 32, Water Plant	100 00		449 54
" 32, Cleaning Wells .....	.....		1,075 00
" 32, Torpedo .....	.....		819 00
" 32, Tank .....	.....		1,675 30
" 32, Drilling .....	.....		7,169 60
Royalty, Oil.....	85,057 45	49,521 42	39,483 57
		85,057 45	5,591 90

Lot 293.

Lot 293, Oil	1,096 71		
" 293, Expense .....	.....		562 69
" 293, Cleaning .....	.....		192 50
" 293, Supply	54 08		89 05
" 293, Bldg. & Rig .....	.....	1,150 79	55 48
			899 72

	Receipts.	Disbursements.
General Expense		11,339 03
Legal Expense	45 00	7,055 87
Tax		5,080 43
Horse, Buggy & Harness		713 12
Bartlesville Office		4,285 23
" " Rent		543 75
Attorney's Salary		1,201 98
New York Office		498 00
General Rig		580 00
2/3 of this expense chargeable to oil	45 00	31,297 41
Totals for year 1908	30 00	20,864 94
		66,840 13

70 *Statement of Receipts and Disbursements in Oil Business for Year 1909.*

Lot 32.

	Receipts.	Disbursements.
Lot 32, Oil	18,508 00	6,645 80
" 32, Expense	350 00	1,773 57
" 32, Supply	778 92	253 40
" 32, Bldg. & Rig		1,175 30
" 32, Drilling		138 72
" 32, Water Plant		88 84
" 32, Tank		315 00
" 32, Torpedo		
Royalty, Oil	19,636 92	10,390 63
	71,953 56	4,699 74
		4,699 74

Lot 293.		Lot 293.	
Lot 293, Oil	1,515 90	Lot 293, Oil	1,309 71
" 293, Supply	34 00	" 293, Supply	864 11
" 293, Bldg. & Rig .....	.....	" 293, Bldg. & Rig	92 38
" 293, Torpedo .....	.....	" 293, Torpedo	423 00
" 293, Cleaning .....	.....	" 293, Cleaning	753 50
		1,549 90	3,442 70
General Expense .....	.....	General Expense	13,245 26
Legal Expense .....	.....	Legal Expense	9,113 30
Tax	25 88	Tax	3,643 35
Horse, Buggy & Harness .....	.....	Horse, Buggy & Harness	211 00
New York Office .....	.....	New York Office	512 75
Bartlesville Office .....	.....	Bartlesville Office	4,936 48
" Rent .....	.....	" Rent	798 05
General Rig .....	.....	General Rig	543 77
Furniture & Fixtures .....	.....	Furniture & Fixtures	148 60
		25 88	23,152 56
2/3 of this expense chargeable to oil .....	.....	17 26	22,101 70
Totals for year 1909 .....	.....	93,157 64	40,634 77

71 *Statement of Receipts and Disbursements in Oil Business for Year 1910.*

In Oil Business for Year 1910.

Lot 32.		Lot 32.	
Lot 32, Oil	Receipts.	Lot 32, Oil	Disbursements.
" 32, Expense	21,263 63	" 32, Expense	7,104 18
" 32, Supply	95 00	" 32, Supply	2,473 62
	3 50		

	Receipts.	Disbursements.	
" 32, Bldg. & Rig.	.....	1,436 48	
" 32, Drilling	.....	1,040 00	
" 32, Tank	.....	67 94	
Royalty, Oil	21,362 13		12,122 22
	<u>94,802 22</u>	<u>4,999 74</u>	<u>4,999 74</u>
Lot 293.			
Lot 293, Oil	.....	
" 293, Expense	1,916 34		
" 293, Supply	.....	1,009 94	
	<u>.....</u>	<u>105 72</u>	<u>1,115 66</u>
	1,916 34		
Lot 275.			
Lot 275, Oil	.....	
" 275, Purchase Price	595 83		
" 275, Expense	.....	3,000 00	
" 275, Bldg. & Rig.	10 97	519 55	
" 275, Supply	.....	27 50	
	<u>.....</u>	<u>16 78</u>	
General Expense	606 80		3,563 83
Legal Expense	.....	13,642 28	
Tax	.....	6,348 67	
Horse, Buggy & Harness	.....	8,222 24	
Bartlesville Office	.....	325 75	
" Rent	.....	2,845 54	
General Well	.....	1,139 88	
	.....	<u>3,346 47</u>	

General Rig.....	489 17
Furniture & Fixtures.....	827 62
	<hr/>
2/3 of this expense chargeable to oil.....	37,187 62

	<hr/>
Totals for year 1910.....	118,687 49
	<hr/>
	14,791 74
	<hr/>
	36,593 19

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Statement of Receipts and Disbursements in Oil Business for Year 1911.

In Oil Business for Year 1911.

Jan. 1 to May 31.

Lot 32.

	Receipts.	Disbursements.
Lot 32, Oil	9,304 35	
" 32, Expense	10 00	3,264 76
" 32, Supply		3,242 39
" 32, Drilling		1,221 25
" 32, Bldg. & Rig.....		289 84
" 32, Cleaning		445 60
" 32, Torpedo		138 00
" 32, Tank		16 32
	9,314 35	8,618 16
Royalty, Oil	71,276 23	1,431 91
	<hr/>	<hr/>
	71,276 23	1,431 91

Lot 293.		Receipts.	Disbursements.
Lot 293, Oil		1,361 42	
" 293, Expense			343 10
" 293, Supply			1,783 26
" 293, Bldg. & Rig			1,274 35
" 293, Tank			141 75
" 293, Torpedo			195 50
		1,361 42	3,737 96
Lot 275.			
Lot 275, Oil		572 61	
" 275, Supply			2 79
		572 61	2 79
General Expense			11,516 39
Legal Expense			4,803 12
Tax			1,209 01
Office Expense			1,603 77
Office Rent			774 92
Furniture & Fixtures			82 85
Horse, Buggy & Harness			35 50
General Well			101 88
General Rig			805 06
			20,932 50
2/3 of this expense chargeable to oil			13,955 00
Totals for year 1911 (Jan. 1, to May 31)		82,524 61	27,745 82

Gas Statement.

Receipts and Disbursements in Gas Business for the Years 1904, 1905, and 1906.

	Receipts.	Disbursements.
Year 1904.....	3,285 57	8,040 93
" 1905.....	18,976 15	27,637 41
" 1906.....	28,639 60	21,735 36

Expenses of Carrying on Business of Company.

General Expenses	12,331 12	10,165 94	14,403 39
Legal Expenses	7,225 00	6,191 66	18,370 09
Tax	92 76	84 46	3,337 64
Horse, Buggy & Harness..	322 83	.....	176 50
New York Office.....	.....	.....	957 69
Bartlesville Office Rent...	506 00	465 00	450 00
Furniture & Fixtures.....	193 68	609 45	300 02
	<hr/>	<hr/>	<hr/>
	20,671 39	17,516 51	38,995 33

1/3 of which added to the disbursements above will give us statement as follows:

		Loss.
Receipts from sale of Gas, Year 1904....	3,285 57	
Disbursements	14,931 39	11,645 82
Receipts from sale of Gas, Year 1905....	18,976 15	
Disbursements	33,476 24	14,500 19
Receipts from same of Gas, Year 1906....	28,639 60	
Disbursements	34,733 80	6,094 20
		<hr/>
		32,240 21

*Exhibit C.**Cost of Gas Wells.*

1905, No. 10, Lot 37.....	\$1,493 90	Exhausted.
1905, " 11, " 37.....	2,099 09	"
1905, " 1, " 59.....	2,459 21	"
1905, " 12, " 37.....	1,693 11	"
1905, " 1, " 160.....	3,010 36	In service.
1905, " 1, " 74.....	3,075 75	" "
1905, " 2, " 172.....	3,693 94	Exhausted.
1906, " 2, 35-26-10.....	3,370 08	Not in Service.
1906, " 1, Lot 173.....	3,944 98	Exhausted.
1906, " 3, " 72.....	2,275 61	"
1906, " 1, 2-25- 9.....	4,125 20	Not in Service.
1906, " 3, Lot 69.....	2,505 88	In service.
1906, " 2, " 173.....	2,870 51	Exhausted.
1907, " 3, " 41.....	2,546 90	"
1907, " 3, " 31.....	2,874 42	"
1907, " 4, " 31.....	2,960 60	"

1907,	"	2,	"	77.....	2,926	01	In Service.
1907,	"	7,	"	172.....	1,554	30	Exhausted.
1907,	"	5,	"	299.....	3,613	60	In Service.
1908,	"	3,	"	77.....	3,470	00	Not in Service.
1908,	"	6,	"	299.....	3,529	00	In Service.
1908,	"	7,	"	299.....	3,684	89	Not in Service.
1908,	"	4,	"	77.....	3,812	08	In Service.
1909,	"	5,	"	77.....	3,932	63	" "
1909,	NE Cor.	"	202.....		1,561	34	" "
1909,	"	2,	2-26-10.....		3,274	99	Not in service.
1909,	"	1,	Lot 156.....		3,220	79	" " "
1909,	"	1,	2-26-10.....		4,070	15	" " "
1909,	"	3,	2-26-10.....		2,161	00	" " "
1911,	"	19,	Lot 37.....		1,014	62	Exhausted.
1911,	"	3,	" 156.....		3,365	33	Not in service.
1911,	"	28,	" 43.....		5,094	73	" " "
					<hr/>		
					95,285 00		

75 Exhibit D.

Gas well.	Location.	Initial volume.	Volume Jan. 1, 1911.	Original cost.
No. 6	Lot 299.....	14,000,000	6,648,216	\$3,529 00
" 1	" 160.....	6,000,000	3,024,000	3,010 36
" 1	" 74.....	8,000,000	2,160,000	3,075 75
" 4	" 77.....	10,000,000	5,495,524	3,812 08
" 5	" 77.....	17,000,000	5,305,920	3,932 63
" 2	" 77.....	15,000,000	5,495,524	2,926 01
" 3	" 69.....	4,800,000	2,339,280	2,505 88
" 5	" 299.....	15,500,000	6,648,216	3,613 60
			Almost	
NE Cor.	" 202.....	No Gauge;	Exhausted	1,561 34
			<hr/>	
			90,300,000	37,116,680
				<hr/>
				\$27,966 65

76	Total Cost of Wells Purchased, as shown by attached list.....	95,285 00
	Maintenance to date.....	13,967 87
	Drilling for Gas by Company, all of which were failures, and represent a total loss, salvage deducted at original cost.....	15,175 83

Total invested in Gas wells, since

January 1, 1905	\$124,428 70
Cost of above wells which are exhausted.....	\$31,481 19

Of the ten wells in service showing an initial volume of 90,300,000 cu. ft., on January 1, 1911, show only a volume of 37,116,680 cu. ft., showing a loss from service of, in round numbers, 53,000,000 cu. ft., or more than half, and inasmuch as the static pressure has correspondingly fallen off, I would consider them exhausted to the extent of at least 2/3; the original cost of these wells was \$27,966 55, 2/3 of which is.. \$18,644 37

In addition to the loss of volume in these wells mentioned, all of the wells in the immediate vicinity show a heavy loss in volume, as well as static pressure. There are also 10 wells shown on attached schedule costing \$35,837.16 from which we are receiving no revenue on account of being unavailable for a market we have established and are slowly, of natural consequence, depreciating in volume. It will then be noted that, with the amount of \$124,428.70 invested in wells, \$15,175.83 a loss in the first instance, \$31,481.19 for wells exhausted, and \$18,644.37 for loss of wells in service, we have a total loss of \$65,301.39, which leaves only a net of our original purchase \$65,301.39, \$35,837.16 of which we are unable to realize on at this time.

(Here follows copy of original lease, marked pages 77 and 78.)

OKLAHOMA CITY, OKLA., Aug. 2, 1911.

The State Board of Equalization met at 2 o'clock P. M., August 2, 1911, pursuant to recess, with all members present.

Mr. Meyer: I move that all public service corporations assessed by this Board shall be finally considered to have been assessed as of this date, August 2nd, 1911.

Mr. Cruce: Second the motion.

On roll call the vote was as follows:

Voting aye: Bryan, Cruce, Harrison, Meyer and Taylor.

Voting no: Dunlop. Absent and not voting, West.

That thereafter, and on the 30th day of August, 1911, the following proceedings were had by and before the State Board of Equalization, to-wit:

OKLAHOMA CITY, OKLA., Aug. 30, 1911.

The State Board of Equalization met pursuant to recess at ten o'clock A. M. August 30th, 1911, with the following members present:

Governor Lee Cruce, Chairman,
Secretary of State Ben F. Harrison, Secy. Pro Tem.,
State Treasurer Robert Dunlop,
President Board of Agriculture, G. T. Bryan,
State Examiner and Inspector Charles A. Taylor,
Attorney General Charles West.
Absent: Auditor Leo Meyer.

Mr. K. C. Crane appeared before the Board representing the Indian Territory Illuminating Oil Company and made a statement relative to the assessment of said company.

Mr. West: I move we reconsider the assessment of the Indian Territory Illuminating Oil Company.

Mr. Taylor: Second motion.

Motion carried, all members present voting aye.

Mr. West: I move we assess the property of the Indian Territory Illuminating Oil Company for the purpose of taxation the sum of \$538,350.

Mr. Taylor: Second the motion. Motion carried, all members present voting aye.

That thereafter, and on the 2d day of October, 1911, the following proceedings were had before said Board relating to the assessment of said Company:

OKLAHOMA CITY, OKLA., Oct. 2, 1911.

The State Board of Equalization met pursuant to recess taken at 2:00 o'clock p. m., all members present with exception of State Examiner and Inspector Chas. A. Taylor, absent, on account of illness.

Indian Territory Illuminating Oil Company.

Mr. K. C. Crane representing the Indian Territory Illuminating Oil Company appeared before the Board and made a statement relative to the valuation for taxation purposes of the property of said company.

84 In the Supreme Court of the State of Oklahoma.

In the Matter of the ASSESSMENT OF THE INDIAN TERRITORY ILLUMINATING OIL Co.

I, Leo Meyer, Auditor of the State of Oklahoma, and Ex Officio Secretary of the State Board of Equalization of said State, do hereby certify that the within and foregoing sheets contain a full, true and correct transcript and copy of all reports and returns filed in my office, and all oral and written testimony, exhibits (except Exhibit A at the hearing of June 29, 1911, the same being a part of the record in Case No. 2845 in the Supreme Court of Oklahoma, as herein noted), pleadings and statements filed, heard, introduced or considered before the said Board of Equalization relating to the assessment by said Board of the property of the Indian Territory Illuminating Oil Company for the purpose of taxation in the State of Oklahoma for the fiscal year ending June 30, 1912, and all orders, motions and rulings by said Board thereon.

In Witness Whereof, I have hereunto set my hand, and affixed the seal of my office, this 30th day of October, 1911.

[SEAL.]

LEO MEYER,

*State Auditor, and ex Officio Secretary
of the State Board of Equalization.*

85 In the Supreme Court of the State of Oklahoma.

In the Matter of the ASSESSMENT OF THE INDIAN TERRITORY ILLUMINATING OIL COMPANY by the State Board of Equalization for the Fiscal Year Ending June 30, 1912.

Notice of Appeal.

To Benjamin F. Harrison, Secretary of State of the State of Oklahoma, and Lee Cruce, Governor; Leo Meyer, Auditor, and ex Officio Secretary of said Board; Robert Dunlop, State Treasurer; G. T. Bryan, President Board of Agriculture; Charles A. Taylor, State Examiner and Inspector; Charles West, Attorney General, Comprising the State Board of Equalization of the State of Oklahoma:

You are hereby notified that the Indian Territory Illuminating Oil Company appeals from the assessment and valuation of its prop-

erty for the purpose of taxation in the State of Oklahoma for the fiscal year ending June 30, 1912, as made and fixed by the State Board of Equalization on the 16th day of May, 1911, and modified on the 30th day of August, 1911, and from the action of said Board in failing, neglecting and refusing to correct, modify or reduce said assessment as made on said 30th day of August, 1911; said Board of Equalization being still in session.

You are further notified that as grounds of its appeal from said assessment and valuation, and from the action of said Board of Equalization in failing, neglecting and refusing to correct said assessment, the Indian Territory Illuminating Oil Company alleges and states as follows, to-wit:

86 First. That said company had before the making of said assessment and valuation, and as required by law, filed in the office of the Auditor of the State of Oklahoma its duly verified return of its taxable property, showing the actual fair and true cash value thereof as \$53,835.10; that said sum represents and did represent the actual fair cash value of the taxable property of said company as of the first day of February, 1911; and that the value of said taxable property has not increased since said date, but has rather decreased. And, further, that on the 18th day of April, 1911, said company, by its manager, appeared before said Board of Equalization and introduced evidence in support of the statements made in said return.

Second. That on the sixteenth day of May, 1911, the said Board did arbitrarily and unjustly, and contrary to the evidence before it and to said verified return, and without any information or evidence justifying such action, assess and fix the valuation of the taxable property of said company at \$1,130,535; that thereafter, and on various occasions, the said company, by its attorneys, appeared before said Board and protested against and complained of said assessment as being excessive and unreasonable, and introduced evidence in support of said complaints and protests; said appearances being on, to-wit, the 29th day of June, the 10th day of July, the 17th day of July, the 2d day of August, and the 30th day of August, 1911; that on said 30th day of August, 1911, said Board reconsidered said assessment of May 16, 1911, and assessed the property of said company for the purpose of taxation at \$538,350.00; said assessment being contrary to the return made by said company and to

87 the evidence before said Board, and being \$484,514.90, or nine hundred per cent, in excess of the fair cash value of said property, as set forth in the verified return thereof filed in the office of the Auditor of the State of Oklahoma, and placed by him before said Board; that on the 2d day of October, 1911, said company appeared before said Board, by its attorneys, to protest against and complain of said excessive, unreasonable, arbitrary and erroneous assessment and valuation of its property, but that said Board failed, neglected and refused, and still fails, neglects and refuses, to change, correct or modify said assessment and valuation, and ignored and disregarded, and continues to ignore and disregard, said return and

all of said evidence introduced before it supplementary to and confirmatory of said return.

Third. That said arbitrary, unjust and erroneous action of said Board, in so assessing the valuation of said Company's property for the purpose of taxation in the State of Oklahoma, will, if allowed to stand, greatly and unfairly increase the burden of taxation resting upon said company, and will deprive it of its property without due process of law, contrary to the provisions of Section 1 of Article XIV of the Constitution of the United States, and Section 7 of Article II of the Constitution of the State of Oklahoma, and will deprive it of the equal protection of the laws, contrary to the provisions of Section 1 of Article XIV of the Constitution of the United States.

Fourth. The said Indian Territory Illuminating Oil Company further alleges and states that in fixing the assessed valuation of the taxable property of said company the said Board, as it is informed and believes, attempted to place a value upon and to tax the franchise, occupation, license, or right of said company to do business; which franchise, license and right the said company possesses and is exercising in the reservation of the Osage Tribe of Indians, the same being Osage County, Oklahoma, under and by virtue of a lease specifically approved by the United States Government, through its Interior Department, as guardian of said Tribe; that said lease with said Tribe was specifically renewed by the United States Government by the Act of March 3, 1905, and was further by said Government recognized in the Osage Allotment Act, being the Act of June 28, 1906; that the territory comprising said Osage Reservation is under the exclusive jurisdiction of the United States in so far as the rights of said Osage Tribe are concerned; that the operations of said company in said territory, under said lease contract so made, approved and recognized, are governed and carried on under rules and regulations promulgated by the Honorable the Secretary of the Interior, as provided in said lease, and that this company is under the direct control of the Government of the United States, exercised by the officers of the said Department; and that any attempt to tax this company's franchise or right to do business and operate under said lease is an attempt to tax a right and franchise granted by the Federal Government, and is illegal and void; and, further, that any attempt to tax this company's operations and right to do business with said Osage Tribe of Indians under said lease is an attempt to impose, and will result in imposing, an illegal burden by the State of Oklahoma upon commerce with an Indian Tribe, contrary to the provisions of Section 8 of Article I of the Constitution of the United States.

Fifth. That said company is not engaged in a public service of any kind, and that said company is not in any sense a public service corporation, as shown by the evidence presented to said Board; and that said Company is not taxable on the assessment of said Board, and has no property which is subject to assessment and valuation for taxation by said Board, under the laws of the State of Oklahoma.

Sixth. That the small surface gas lines belonging to this company are but a very small part of the business of the company, its business being almost wholly and primarily the production of petroleum or oil; that said lines were built and extended from time to time on the surface of the ground for the sole purpose of conveying gas to producers of oil, in order to develop the said leased territory for oil, and increase the company's profits from its oil interests; that said surface lines were extended to the towns of Avant and Bigheart incidentally, and at the earnest request of the inhabitants of said towns, who were and are principally people working in the oil fields surrounding said towns; and that this company has no franchise rights whatever as a public service corporation in said towns, or either of them, for any purpose; and said company insists that if its service to the people of said towns be adjudged a public service, and this company a public service corporation as to said towns, that still, in no event should any of this company's property be assessed and taxed as employed in a public service, as to said towns, other than the property actually used in serving the consumers in said towns, as shown in the evidence before said Board.

Seventh. That the furnishing of gas by this company to the Ochelata Gas & Water Company and the Bartlesville Gas & Oil Company, as set forth in the evidence before said Board, is not a public service; that the said companies so furnished with gas by this company are themselves public service corporations in the towns of Ochelata and Bartlesville, respectively, by reason of certain franchise rights therein, under which they furnish gas to the domestic consumers in said towns, and are so assessed and taxed; and that it is unfair, unjust and illegal to attempt to assess and tax this company as a public service corporation upon the same business.

Eighth. That the said Board had no right or authority to increase the valuation of the taxable property of the said company for the purpose of taxation, above the valuation thereof as set forth in the verified return thereof duly filed in the office of the State Auditor, without evidence justifying such increase; and that its action in so increasing such valuation, and in failing, neglecting and refusing to modify, reduce and correct such erroneous valuation, ignoring and disregarding the information and evidence before it, was arbitrary, unjust, unreasonable and illegal, and will, if allowed to stand, result in depriving this company of its property without due process of law, and in depriving it of the equal protection of the laws, and will render this company unable to carry out the provisions of, and to carry on and perform the duties imposed upon it by, its said lease and contract with the Osage Tribe of Indians and the United States Government; thereby hindering and obstructing the performance of a contract with the Federal Government, and interfering unduly and illegally with commerce with an Indian Tribe; all contrary to the specific constitutional provisions hereinbefore referred to.

Ninth. That this company is now paying and has heretofore paid

91 all legal taxes upon its business and property in this State, including gross revenue, gross production and ad valorem taxes, and that it has not at any time attempted to avoid the payment of any just or legal tax.

Tenth. That this appeal is taken and this notice is given prior to the final adjournment of the said State Board of Equalization, and within sixty days after the making of said assessment.

And that, for the reasons hereinbefore set forth, the Indian Territory Illuminating Oil Company appeals to the Supreme Court of Oklahoma from the action of the State Board of Equalization in fixing and assessing the valuation of the taxable property of the said company on the 30th day of August, 1911, as hereinbefore set forth, and from the action of said Board in failing, neglecting and refusing to modify, correct or rescind such erroneous assessment; in pursuance and under the authority of an Act of the Legislature of Oklahoma entitled "An act Providing for Appeals from the actions of Board of Equalization," approved March 24, 1910, and Section 15 of an Act of the said Legislature entitled "An Act creating the office of county assessor," etc., approved March 25, 1911; and the said company hereby serves this, its notice of appeal, upon the Secretary of State, as provided in said Statute of 1910, and upon the said Board of Equalization.

THE INDIAN TERRITORY ILLUMINATING
OIL CO.,

By JOHN H. BRENNAN,
HARRIS & NOWLIN,
KENNETH C. CRAIN, *Attorneys.*

92 In the Supreme Court of the State of Oklahoma.

In the Matter of the Assessment of the Indian Territory Illuminating Oil Company by the State Board of Equalization for the Fiscal Year Ending June 30, 1912.

THE STATE OF OKLAHOMA, ss:

I, Leo Meyer, Auditor of the State of Oklahoma, and Ex Officio Secretary of the State Board of Equalization, do hereby acknowledge and accept service of notice of the appeal of the Indian Territory Illuminating Oil Company from the assessment and valuation of its property by the State Board of Equalization of Oklahoma for the purpose of taxation for the fiscal year ending June 30, 1912, and from the action of said Board in failing to modify, correct or reduce such assessment; of which notice the foregoing is a true copy.

Witness my hand, and the seal of my office, this 26th day of October, 1911.

[SEAL.]

LEO MEYER,
F.,

*State Auditor and ex Officio Secretary of
the State Board of Equalization.*

93 In the Supreme Court of the State of Oklahoma.

In the Matter of the Assessment of the Indian Territory Illuminating Oil Company by the State Board of Equalization for the Fiscal Year Ending June 30, 1912.

THE STATE OF OKLAHOMA, ss:

I, Benjamin F. Harrison, Secretary of State of the State of Oklahoma, do hereby acknowledge and accept service of notice of appeal of the Indian Territory Illuminating Oil Company from the assessment and valuation of its property by the State Board of Equalization of Oklahoma for the purpose of taxation for the fiscal year ending June 30, 1912, and from the action of said Board in failing to modify, correct or reduce such assessment; of which notice the foregoing is a true copy.

Witness my hand, and the seal of my office, this 26th day of October, 1911.

[SEAL.]

[SEAL.]

BENJAMIN F. HARRISON,
Secretary of State.

94 In the Supreme Court of the State of Oklahoma.

To Hon. Leo Meyer, State Auditor, Oklahoma City, Oklahoma:

For the purpose of use in its appeal from the assessment and valuation of its taxable property for the purpose of taxation for the fiscal year ending June 30, 1912, by the State Board of Equalization, the Indian Territory Illuminating Oil Company respectfully requests that you, as Secretary of said Board, and custodian of its minutes and records, furnish to the said Company a complete record of the returns, evidence, pleadings, exhibits and statements filed, heard, introduced or considered before the said Board or in your office relating to the assessment of the said Indian Territory Illuminating Oil Company, and all orders, motions, rulings and proceedings of the said Board in connection therewith.

INDIAN TERRITORY ILLUMINATING
OIL CO.,

By JOHN H. BRENNAN,
HARRIS & NOWLIN,
KENNETH C. CRAIN,

Attorneys.

I hereby acknowledge receipt of a copy of the above request and notice, this 26th day of October, 1911.

LEO MEYER,
F.,

*State Auditor, ex Officio Secretary State
Board of Equalization.*

95 In the Supreme Court of the State of Oklahoma.

In the Matter of the Assessment of the Indian Territory Illuminating Oil Company by the State Board of Equalization for the Fiscal Year Ending June 30, 1912.

Entry of Appearance.

Now comes the State Board of Equalization of the State of Oklahoma, and the various officers comprising said Board, to-wit, Governor Lee Cruce, State Auditor Leo Meyer, Secretary of State Benjamin F. Harrison, State Treasurer Robert Dunlop, President Board of Agriculture G. T. Bryan, Attorney General Charles West, and State Examiner and Inspector Charles A. Taylor, in response to the notice of appeal served on the Secretary of State and on the State Auditor, Ex Officio Secretary of said Board, by the Indian Territory Illuminating Oil Company, appellant and petitioner herein, as per copy thereof and acknowledgments of service attached to the record herein, and hereby waive issuance and service of summons in error.

CHARLES WEST,
Attorney General,
By W. C. RIVES,
Ass't Atty Gen.

Oct. 31st, 1911.

(Filed Oct. 3, 1911, W. H. V. Campbell, Clerk.)

Endorsed: # 3240. In the Supreme Court of the State of Oklahoma. In the Matter of the Assessment of the Indian Territory Illuminating Oil Company. Petition and Record of the Indian Territory Illuminating Oil Co. on Appeal. John H. Brennan, Bartlesville, Okla., Harris & Nowlin, Kenneth C. Crain, Oklahoma City, Okla., Attorneys for Petitioner.

96 And thereafter, to wit, on January 9th, 1912, there was made and entered the following order.

Supreme Court, January Term, 1912, January 9th, 1912, First Judicial Day.

3240.

INDIAN TER. ILL. OIL CO., Plaintiff in Error,
vs.
STATE BD. OF EQUALIZATION, Defendant in Error.

And now on this day the above cause comes on for hearing, and it is ordered by the Court that the stipulation herein that Mr. R. M.

Campbell be appointed referee herein with power to take testimony and report his findings of fact and conclusions of law to this court, be, and the same is hereby allowed.

97 And thereafter, to wit, on March 12th, 1912, there was made and entered the following order.

Supreme Court, March Term, 1912, March 12th, 1912, First Judicial Day.

3240.

In re Assessment of Property of Indian Terr. Illuminating Oil Co. for Fiscal Year Ending June 30th, 1912.

And now on this day it is ordered by the Court that the referee in the above entitled cause, be, and he is hereby allowed sixty days additional time in which to make his report.

98 And thereafter, to wit, on May 7th, 1912, there was made and entered the following order.

Supreme Court, March Term, 1912, May 7th, 1912, Sixteenth Judicial Day.

3240.

In re Assessment of Property of Indian Territory Illuminating Oil Co., for Fiscal Year Ending June 30, 1912.

And now on this day it is ordered by the Court that the referee in the above entitled cause be given sixty days additional time in which to file report.

99 And thereafter, to wit, on July 18, 1912, there was made and entered the following order.

Supreme Court, July Term, 1912, July 18th, 1912, First Judicial Day.

3240.

In the Matter of Assessment Indian Territory Ill. Oil Co.

And now on this day it is ordered by the Court that the motion of the Referee herein asking thirty days additional time in which to file his report herein, be, and the same is hereby allowed.

100 And thereafter, to wit, on August 20, 1912, there was made and entered the following order.

Supreme Court, July, 1912, Term, August 20th, 1912, Ninth Judicial Day.

3240.

In re assessment of Indian Territory Illuminating Oil Co.

And now on this day it is ordered by the court that time for referee to make his report in the above entitled cause be, and the same is hereby extended until September 1st, 1912.

101 And thereafter, to wit, on September 10, 1912, there was made and entered the following order.

Supreme Court, September Term, 1912, September 10th, 1912, First Judicial Day.

3240.

In the Matter of the Indian Territory Illuminating Oil Co.

And now on this day it is ordered by the Court that the Referee herein is allowed thirty days additional time in which to make his report.

102 And thereafter, to wit, on October 8, 1912, there was made and entered the following order.

Supreme Court, September Term, 1912, October 8, 1912, Fifteenth Judicial Day.

3240.

In re Assessment Ind. Ter. Illuminating Oil Co.

And now on this day it is ordered by the court that the referee herein be given until October 12th, 1912, to file his report.

103 Filed Oct. 12, 1912. W. H. L. Campbell, Clerk.

In the Supreme Court of the State of Oklahoma.

No. 3240.

In the Matter of the Assessment of the Indian Territory Illuminating Oil Company.

Report of Referee.

To the Honorable Supreme Court of the State of Oklahoma:

The cause above entitled is an appeal from the assessment made by the State Board of Equalization of the State of Oklahoma, of the

taxable property of the Indian Territory Illuminating Oil Company for the year 1911.

By order of the Court duly entered, I was appointed Referee and was directed as such, to report my findings of fact and conclusions of law to the Court. This appointment was made in January, 1912, and after taking the oath of office I heard the evidence offered by the Indian Territory Illuminating Oil Company, in the month of March, 1912, at which time said Indian Territory Illuminating Oil Company and the State of Oklahoma, appeared before me by their respective attorneys. The time allowed by the original order in which the report of the Referee should have been filed, has been extended by the Court, and I now beg leave, in accordance with the order of appointment, to submit the following findings of fact and conclusions of law as arrived at by me after a consideration of the evidence and of the transcript of the proceedings had before the State Board of Equalization. Before said Board certain evidence was offered and certain statements were made and certain documents were filed by the Indian Territory Illuminating Oil Company, and these have all been considered by me, together with such additional documents, statements and arguments of counsel as the respective parties to the litigation have seen fit to offer.

Findings of Fact.

From the evidence I find the following facts:

I.

The Indian Territory Illuminating Oil Company is a corporation, organized under and by virtue of the laws of the State of New Jersey, with a capital stock of \$3,500,000.00.

II.

On the 16th day of March, 1896, the Osage Nation of Indians in Oklahoma Territory, entered into a contract with one Edwin B. Foster, by the terms of which said Edwin B. Foster had a blanket lease upon the lands in Oklahoma Territory, known as the Osage Indian Reservation, for the sole purpose of prospecting and drilling wells and mining and producing petroleum and natural gas only. This lease covered a period of ten years from its date and was approved by the Secretary of Interior. Under an Act dated March 3, 1905, this lease was extended as to 680,000 acres of said reservation for a period of ten years from the date of its original expiration, and by the terms of said extension said lease will expire on the 16th day of March, 1916. Prior to the act of March 3, 1905, by which said lease was extended, the same had been acquired by and assigned to the Indian Territory Illuminating Oil Company.

105

III.

The Indian Territory Illuminating Oil Company has sub-leased to something more than one hundred persons and corporations, most

of the lands covered by said lease contract as extended on March 3, 1905, and oil operations on said lands have been and are being conducted largely by such sub-leases.

IV.

A small portion of the tract, the amount of which does not appear from the evidence, is operated by the parent company direct.

V.

By the terms of the lease contract with the Osage Tribe of Indians, as extended by Act of March 3, 1905, the sub-lessees are required to pay a royalty of one-sixth of the oil produced upon the property covered by the lease, of which amount $1/24$ goes to the parent company and $3/24$ or $1/8$ to the Osage Indians, the payments on behalf of the Indians being made to the United States Indian Agency for the Osages, at Pawhuska, Oklahoma, under and by virtue of certain rules and regulations governing the leasing of said lands, promulgated by the Department of the Interior.

VI.

The Indian Territory Illuminating Oil Company has laid pipe lines upon and across the land covered by said lease, for conveying natural gas, and during the period of its operations it has been the practice of said company to furnish natural gas to the sub-lessees for use as fuel in their drilling and pumping operations at a flat rate, the amount of which is not disclosed by the evidence.

VII.

The Indian Territory Illuminating Oil Company, during the year 1911, and prior thereto, furnished natural gas for domestic consumption to the citizens and residents of the towns of Bigheart and Avant, two small towns located in the Osage Nation, adjacent to the pipe lines of said Company. It was also during said year and prior thereto, furnishing some gas to a local corporation in the City of Bartlesville, which held a franchise for and was engaged in the business of selling gas to the residents and citizens of that city, and the same was true at the town of Ochelata, where the local distributing company was furnished certain quantities of gas for use in its business in selling gas to the inhabitants of that place.

VIII.

The Indian Territory Illuminating Oil Company had no local franchises at either Bigheart or Avant, for the distribution of gas, and was not engaged in the distribution and sale of gas to the citizens and residents of the other places mentioned.

IX.

By the terms of its contract with the Osage Indians, the Indian Territory Illuminating Oil Company, was required to furnish gas



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107 free to the Osage citizens and for use in the public institutions of the Osages, under certain conditions named.

X.

Said Company has been and is primarily engaged in the business of Oil production in the territory covered by said lease with the Osage Indians, and has conducted its operations in the gas business as an incident to the development of the oil territory and the production of oil, and, to some extent, as a matter of accommodation to the citizens of Bigheart and Avant, and other persons residing along its pipe lines.

XI.

Said Company made a sworn return to the State Board of Equalization for the year 1911, of \$53,835.10, as the actual fair cash value of that part of its property engaged in the public service, by reason of the gas business transacted by the Company. This valuation was raised by the State Board of Equalization to \$538,350.00, by action of the Board on the 30th day of August, 1911.

XII.

Said Company returned its property to the local assessors of Osage and Washington Counties, for the year 1911, at \$52,830.02, at which the same was assessed.

XIII.

All the property owned by said Company and used in the conduct of its business is located in Osage and Washington Counties, Oklahoma, and all its business operations are conducted in said State.

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XIV.

The total value of said Company's stock, including all its property, tangible and intangible, on the first day of February, 1911, was \$500,000.00.

XV.

The amounts returned by said Company to the local assessors of Osage and Washington Counties, and to the State Board of Equalization, do not include the lease, sub-leases, contracts and franchises of the Company, but only its physical properties, such as pipes, pipe lines and accessories, furniture, cash, account and bills receivable, it being contended by said Company that its lease, sub-leases, contracts and franchises are not subject to taxation by the State of Oklahoma.

XVI.

The total value of the Indian Territory Illuminating Oil Company's property of every kind located in Oklahoma, over and above the amount locally assessed, was \$447,169.98, on February 1, 1911.

XVII.

The gas business, as heretofore conducted by said Company, has not been, of itself, profitable, but it has been and is valuable as an adjunct to the Company's oil operations.

Conclusions of Law.

109 I beg leave to report the following conclusions of law in this case, based upon the findings of fact as above set forth and stated.

I.

The Indian Territory Illuminating Oil Company is liable for taxation by the State of Oklahoma, for the full value of its property, tangible and intangible,—that is, for the sum of \$500,000.00.

II.

I conclude that the Indian Territory Illuminating Oil Company is not exempt from taxation upon the theory that it is a Federal agent or that it holds a franchise from the Federal Government, but that the Act of Congress under which the contract with the Osage Indians was authorized and extended to the 16th day of March, 1916, was not entered into for the purpose of using said Indian Territory Illuminating Oil Company, as a Federal agent, or in the discharge of any governmental duty or function. In my opinion, the Act of Congress did not enlarge in any way, or in any way affect the powers of the Indian Territory Illuminating Oil Company, to make a contract. It was free to do that at any time, but this Act of Congress simply made the Osage Tribe of Indians eligible to enter into a contract on their part. The purpose of the Government was to see to it that said tribe of Indians was fairly dealt with and properly treated. They were allowed, with the supervision, and subject to the approval, of the Government, to make the contract for themselves. It was their contract, not the government's.

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III.

Said Company in the transaction of its business in Oklahoma, is a public service corporation on account of the nature of the gas business transacted by it, and by submitting its report to the State Board of Equalization as a public service corporation, and admitting to that Board its liability to be assessed for taxation, by said Board, is estopped to deny that it is engaged in the public service.

IV.

That part of the property of said Company which is used in the production of oil and in the oil business, is not engaged in the public service, but the two kinds of business transacted by said Company, one dealing with oil and the other with gas, are so closely intermingled that it is impossible to say just what part of the total valua-

tion of the Company should be assessed by the State Board of Equalization as engaged in the public service and what part should be assessed by the local assessors of the counties in which the property of the Company is located.

V.

It is immaterial so far as the amount of taxes that must be paid is concerned, or the manner of the payment of the taxes, or the time in which said taxes must be paid, whether the assessment of said Company is made by the State Board of Equalization or by the County Boards of the counties in which its property is located.

111

VI.

Said County Boards of Assessors, upon the report of said Company having assessed its property in those counties connected with the oil business, at \$52,830.02, and that assessment having become final, it is fair and just that the remaining property of the Company should be assessed at the sum of \$447,169.98, said sum being the difference between the total valuation of the Company's property and the amount returned to the local assessors of Osage and Washington Counties.

I recommend that a judgment be entered fixing the assessment upon the Indian Territory Illuminating Oil Company's property, for taxation for the year 1911, at said sum of \$447,169.98.

I have not kept an accurate account of time spent in the consideration of this case, but I have spent more than ten days' time in the hearing and consideration of the evidence, records, argument of counsel, and in the investigation of authorities connected with its determination, and I respectfully request the Court to make such order for my compensation as may be fair, all of which is respectfully submitted.

I return herewith a transcript of all the evidence taken before me as Referee in this case, and request that the same be considered as a part of this report.

R. M. CAMPBELL, *Referee*.

Endorsed: No. 3240. In the Matter of the Assessment of Indian Territory Illuminating Oil Company. Report of Referee.

112 In the Supreme Court of the State of Oklahoma.

Filed Oct. 12, 1912. W. H. L. Campbell, Clerk.

Filed Oct. 12, 1912. W. H. L. Campbell, Clerk.

No. 3240.

In the Matter of the Assessment of the INDIAN TERRITORY
ILLUMINATING OIL COMPANY.

Oath of Referee.

I, R. M. Campbell, of lawful age, being first duly sworn, on oath say: That I will support and defend the constitution of the United States and of the State of Oklahoma, and that I will faithfully and impartially perform the duties of referee in the above entitled cause, according to law, to the best of my ability, so help me God.

R. M. CAMPBELL.

Subscribed and sworn to before me this 23d day of March, 1912.

[SEAL.]

E. E. GIBBENS,

Notary Public.

My commission expires July 24, 1915.

113 In the Supreme Court of the State of Oklahoma.

No. —.

In the Matter of the Assessment of the INDIAN TERRITORY ILLUMINATING OIL COMPANY.

The appellant appeared by John H. Brennan, its attorney, and the State of Oklahoma, appeared by W. C. Reeves, Assistant Attorney General.

And thereupon, the following proceedings were had in office of R. M. Campbell, referee, in Oklahoma City, Oklahoma, on the 23d day of March, 1912.

C. F. LEACH, of lawful age, being duly sworn as a witness on behalf of the appellant, testified as follows:

Direct examination.

By Mr. Brennan:

Q. Mr. Leach, you are a resident of Bartlesville, Oklahoma?

A. I am.

Q. You are general manager of the Indian Territory Illuminating Oil Company?

A. I am.

Q. Was your attention called to a demand or request made by the office of the attorney general for further information?

A. I was.

Q. State, whether this paper I show you, and which we will call "Exhibit Number 1" for identification only, whether that is a summary or memorandum of your property that is assessed, and of taxes paid ad valorem?

114 A. That—this memorandum shows the value of property as returned to the State, or to the County Assessors, in Washington and Osage Counties for the year of 1911, and also the value of property returned to the State Auditor for Osage and Washington County, and also the gross production tax paid, and the yearly gross revenue tax, or matters only assessable against Pipe line companies.

Q. Which you paid, these taxes for 1911, on that amount?

A. The taxes have not been paid, except in Washington County, in Bartlesville of Washington County.

Q. Can you state what the amount of the tax is in Osage County?

A. I cannot.

Q. Can you state whether that tax or assessment, as it appears on the rolls in Osage County, is in any way connected from the books of Osage County?

Mr. Brennan: I show you "Exhibit Number 2."

A. That is a statement, as furnished to me, by the assessor, by the treasurer, County treasurer, of the amount as extended on his rolls, and as returned to him from the Board of Equalization, but does not include the amount as was returned by the Company to the County assessor.

Mr. Brennan: I show you "Exhibit Number 3."

Q. And, state whether that is a statement of the entry made on the rolls in Washington County?

A. It is.

Q. Of the return, on the instructions from the State Board?

A. Yes, that is the property returned in Bartlesville City.

Q. What is "Exhibit Number 4?"

115 Q. State whether that is a general levy and description of the property returned, and exact description of the personal property of the company?

A. It is. Of that as returned in Osage County.

Q. I refer you to "Exhibit Number 5," do you know what that is?

A. That is as returned in Bartlesville City.

Q. Now, tersely describe "Exhibit- 7 to 17" inclusive?

A. They are the returns or copies of the returns, as was returned to the County of Osage and Washington County.

Q. Will you state generally, now, whether "Exhibits 4 and 5" is a resume of the others?

A. It is. Number 4 is a resume of 7 to 17 inclusive, number 5 is **independent.**

Q. Now, just tersely, what is the total value of all the property as returned?

A. One Hundred Six Thousand Six Hundred Sixty-five Dollars and twelve cents.

Q. That doesn't cover the property on which the gross income tax is paid?

A. No. That doesn't include the property upon which gross revenue was paid.

Q. Now, it does not include either a description of the property returned to the State Board, in your return to the State Board? That doesn't include the property you return to the State Board?

A. Yes.

Q. Same property?

A. Yes, sir, same property.

116 Q. Did you return it to the County too?

A. No, the property, as returned to the State Board amounted to \$53,835.10. The property returned to the County Assessors amounted to \$52,830.02.

Q. It is all different property?

A. Different properties.

Q. This \$106,000, item then, covers the gross value of both properties that were returned to Osage County and Washington County?

A. Yes sir.

Q. Now, the greater part of the property of the Indian Territory Illuminating Oil Company, is your royalty property, isn't it?

A. Yes sir.

Q. What part of your acreage does the company own itself, and operate, outside of the property that is subleased to some other person, and from which you get royalties?

A. We are producing oil from four different properties.

Q. Well, about how much acreage is there in the four different properties?

A. Three to four thousand acres. However, that would include probably seventy-five per cent that we don't know whether it would produce oil or not, seventy-five per cent of that amount would be——

Q. You mean seventy-five per cent of the three or four thousand acres?

A. Yes.

Q. And when you say three or four thousand acres, you refer to the total acreage in the particular leases that you own?

A. The particular lot or block number.

Q. Now, these lots, you refer to the particular lot or block, or lease, that you own?

117 A. Yes sir, and operate.

Q. Now, some of these lots contain twelve hundred acres, do they not?

A. Not that we are operating, the largest is about eleven hundred acres.

Q. They are about three miles long, and a half mile wide?

A. Yes sir, one of them is nearly three and one-half miles long.

Q. Now, this three or four thousand acres then, seventy-five per cent of which is not drilled, is the total operated by the company, that is, outside of the acreage from which production is obtained?

A. Yes, sir, for oil. (Question for the books.)

Q. The receipts of the company, as far as oil is concerned, outside of that three or four thousand acres, is from the royalty of 1/24 reserved to the company from about one hundred and twelve sublessees?

A. It is.

Q. And then, besides that, you have the receipts from this gas business?

A. Yes sir.

Q. Now, do you have any method of entering the values of properties on your books, so as to make trial balances in the usual acceptance of that phrase among bookkeepers?

A. No sir.

Q. Do you enter the values of properties at all, upon your books?

A. We do not.

Q. You have a one-sixth royalty, as a general thing, from all the sublessees?

A. Yes, sir.

— One-eighth is paid to the Osage tribe of Indians, is it not?

118 A. That is correct.

Q. Now, is it not a fact, that you never get the one-sixth, but that a division of it is entered into with the pipe line company, so that the pipe line company does pay the Indian one-eighth.

A. Yes.

Q. So that with reference to all your property so subleased, you have no control, of the books, and nothing to do with the collection of the royalty which you are paid one-twenty-fourth (1/24) by the pipe line company, direct over to you?

A. That is correct.

Q. And, as far as that part of the business is concerned, it is merely the receipt of the one-twenty-fourth?

A. Yes, sir.

Q. Now, Mr. Leach, do you make statements every year to the stockholders?

A. Yes, sir.

Q. What do you call that?

A. Well, that is a trial balance, but it only refers to, and contains statements of receipts and expenditures, liabilities and bills receivable and bills payable; no values of property is taken into account, only accounts and cash disbursements.

Q. How long is your lease to run yet?

A. Four years from the 16th day of March this year; expires March 16, 1916.

Mr. Brennan: Now, I offer these different exhibits in evidence, formally, for the purpose of giving Mr. Reeves a chance to examine;—that I have covered the ground.

Mr. Campbell: Exhibits 1 to 17" inclusive, as referred to are admitted as a part of the record.

Cross-examination.

119 By Mr. Reeves:

Q. What is the Indian Territory Illuminating Oil Company, a corporation?

A. A corporation.

Q. Under what law is it organized?

A. New Jersey.

Q. What is the capitalization of that corporation?

A. Three Million Five Hundred Thousand Dollars.

Q. Has all the stock been issued?

A. I couldn't say, but my impression, yes sir, that is my understanding.

Q. Does the company own, what is called a blanket lease, upon the entire Osage nation?

A. No sir.

Q. What proportion of the Osage nation?

A. Six Hundred Thirty Thousand acres.

Q. And part of that is subleased to one hundred and twelve sublessees?

A. Well I couldn't say positively, but in the neighborhood.

Q. And the balance of the acreage, you operate yourself?

A. Yes sir.

Q. Does the company own any property other than this lease in the Osage Nation, and the oil properties thereon, anywhere else?

A. Not that I know of, no sir.

Q. What is the property it owns in Washington County?

A. Something like six miles of these pipe lines, I don't remember what it is, whatever the returns show in Washington County.

Q. Part of your business is selling gas to consumers, and the other branch of your business is producing oil, is it not?

A. Well, you might so interpret it.

120 Q. And you produce oil directly, and also through your sublessees, do you not?

A. Yes sir.

Q. Now, in your statements to your stockholders, or upon the books of your company, what valuation do you place upon this whole property?

A. None.

Q. Has it never been appraised, or assessed?

A. Not to my knowledge. There may have been estimates made by various members of the company, but there is no record, for the reason that you don't know what the value is, there is no value; because if it did not produce oil, it is not worth anything, and you don't know whether it will produce oil. There is only a very limited amount of it that is tested, and you couldn't place a value upon it, for the simple reason; for the reason, if there was a value on the right to produce, you couldn't tell what that right would be a month from now.

Mr. Campbell: As I understand Mr. Leach, you don't carry in your books, any values of these several properties, as an asset or liability?

A. No sir.

Q. And you never pretend to carry on your books, any statement of valuation on this property?

A. No except one lease only. It was a lease that we purchased and gave Three Thousand Dollars for, and that was carried with Three Thousand Dollars for the lease, and the reason of that was, because it was a purchase outright in about 1910.

Q. That was not a part of this blanket Osage Lease you speak of?

A. It was at one time, but had been bought back. I will state that the price placed upon it, was more upon the value of the property, the tangible property, there had been three or
121 four wells drilled on it.

Examination by Mr. Reeves:

Q. Now, this revenue from your sublessees, which is represented by one-twelfth interest, that is what you might term net profit, is it not?

A. No, sir, not net profit.

Q. What is there, in the way of charges incident to that properties?

A. Well, I keep, we keep one clerk almost exclusively, whose duty it is to check that up in the office, there is a certain amount of supervision. If we had no properties, we would have to maintain an office force almost as large as we have. We would have to maintain the office of the company, and almost all of the expense we now incur. For a number of years, the company only had a very limited amount of properties—their expenses were almost as much as they are now, and I would like to correct this in the statement of the one-twenty-fourth, I would like to state that about one hundred and fifty-five thousand acres of this six hundred and eighty thousand acres we have only the one-fortieth.

Q. Now, what are these subleases producing in the way of royalty, in dollars and cents.

A. Well—you have it there in that statement.

Q. Does this statement also contain the amount of production of the company per year?

A. Yes sir, yes sir, as near as practical or necessary, to arrive at approximately the expenditures and receipts.

Q. How long have you been in the oil business, Mr. Leach?

A. I think it was in 1905, that I went to work for the government, in charge of oil and gas operations on the Osage reservation,
122 and resigned that work in 1909, and took a position with this company.

Q. Are you familiar with the value of oil properties in Osage and Washington counties, in this State?

A. Well, I don't know hardly how to answer that. I believe I would know well enough what I would want to give for a property, but I don't know as I would want to place myself up as an expert on valuation, for the reason that I have had nothing to do with buying and selling.

Q. When did the company acquire this property?

A. March 16, 1896.

Q. When was the Indian Territory Illuminating Oil Company organized?

A. In 1902.

Q. When did it take over the property which is involved in this litigation?

A. Well, I couldn't answer that positively, for the simple reason that I was not connected with the company, but it was organized for the purpose of taking it over, and took it over as soon as it was consistent with such matters.

Q. Did it purchase it or acquire it in some other way?

A. I have no knowledge on that.

Q. I am not positive yet, Mr. Leach, that I understand just what property has been actually assessed for taxation, belonging to your company, in Washington and Osage Counties?

A. Well, I think I can make that clear to you. We returned to the board of equalization, all of our pipe lines and fittings connected with the operation of same. We returned to the County assessors,—County authorities, all other properties. I will also say, that in Washington County, we had properties, except such as was
123 returned to the board of equalization, except in the city of Bartlesville, where we returned our gas and office fixtures, and such things.

Q. That aggregated the amount set forth in your "Exhibit 1" did it not, which shows Fifty-two Thousand Eight Hundred Thirty Dollars and two cents (\$52,830.02)?

A. Yes sir.

Q. And the balance of your property, you undertook to return to the State Board of Equalization?

A. Yes sir.

Q. Which amounted to Fifty-three Thousand Eight Hundred Thirty-four and 10/100 Dollars?

A. Yes sir.

Q. Then, according to your contention, the property of the company, including its leasehold interest, should only be placed, for taxation, at One Hundred Six Thousand Six Hundred Sixty-five and 12/100 Dollars?

A. Yes, sir.

(Statement by Mr. Brennan:) The witness is a layman. The property of the I. T. I. O. Company, and all of it, that you are seeming to tax in this proceeding, like any other oil company is paying its just proportion of taxes, in addition to this One Hundred Six Thousand Dollars?

Q. Do you refer to this gross revenue tax?

A. Yes sir.

JOHN H. BRENNAN, of lawful age, being duly sworn as a witness on behalf of the appellant testified, as follows:

Examination by Mr. Brennan:

Q. What is your name?

A. John H. Brennan.

Q. When did you first become connected with the business of the Indian Territory Illuminating Oil Company?

124 A. In 1902. I was retained to liquidate the stock or property of the company of the old stockholders and old owners, from certain people in New York, known as the promoters, by action commenced in New Jersey, Oklahoma and Indian Territory. I was then residing in Wisconsin. All stock, except about one hundred thousand shares, was in the hands of the Corporation Trust Company, of New York, as trustee under a promoters' agreement, and the promoters were in possession of the estate, and taking its revenues. The legal proceedings resulted in our settling with the promoters, and personally, I decided to distribute the stock among the old stockholders, and keep the new corporation, namely, the Indian Territory Illuminating Oil Company, intact, because some of its stock has been sold to bona fide purchasers for value, and should be respected—I think about seventy-five thousand shares. I commenced in April, 1903, to distribute the stock, and ascertain the old stockholders from time to time, and I think it was concluded sometime in 1904. There was some cross litigation with reference to the title and ownership, and interest of old stockholders, with which I was personally unacquainted. The title to the lease had been transferred to the new company, organized by the promoters, namely, the Indian Territory Illuminating Oil Company, and therefore, when I took down the stock and distributed it to the old stockholders, whose names I can give, if necessary, which represented, in my mind, the proper way of doing the business. There was no estimate of the value, or no money paid in. The fact is, at the time of the distribution, the lease had only two years to run; it expired March 16, 1906, and I was retained in the matter of renewal, which occurred on March 3, 1905, one year prior to the expiration.

125 Of course, the stock and property had very little value prior to that time. There was no development on the property to any great amount, and no producers were struck until July 22, 1904, no—June 22, 1904, when the first well, when the first well in the Ochelata pool. I lived,—resided, in Wisconsin, was practicing law there, and continued so to do, but was connected with the company, down to January 21, 1908.

Examination by Mr. Reeves:

Q. I believe you testified before the State Board of Equalization, did you not, Mr. Brennan?

A. Yes sir.

Q. And in that testimony, you gave what you thought was the value of this property?

A. The whole property?

Q. Yes sir.

A. Well, I estimated it at Five Hundred Thousand Dollars, but I particularly emphasized the fact that I couldn't float a bond issue for Three Hundred Thousand Dollars. I went into the markets of the world, and finally had to put it up as collateral security for the debts of the company, which amounted to One Hundred Eighty-five Thousand Dollars. Well, I did estimate it at \$500,000.00, which does include the whole property including all the oil production and oil properties. It includes the lease, stock in the company and the good will and franchise of the company and includes the right to do business in the Osage Reservation, as it is now being conducted. In another form it would mean to transfer all of the stock of the company with the governmental consent and acquiescence. In this connection I gave the facts and we furnished all the figures. I particularly emphasized the fact that I could not float a bond issue for \$300,000.00. I went into the markets and finally had to put the bonds up as collateral for the debts of the company, which amounted to \$185,000.00. Our short term of lease was the main trouble. The mortgage and bonds covered the whole business, the lease and the license to do business as well as the property. Since I gave the above figures at the former hearing before the State Board of Equalization, eight months have passed and the time for the ending of the lease is so much nearer.

Q. Is the company considered a valuable oil property at this time?

A. Well, now, that is a glittering generality—yes sir, it is glittering. The stock—I cannot answer that, except that we have not got any market for our stock.

Q. Does the company produce large revenues, large dividends?

A. No, that is the trouble with it, it has produced a dividend of one per cent a year through a period of nine years—a period of eight years.

126 Q. That is on the capitalization of Three Million Five Hundred Thousand Dollars?

A. Yes sir.

Q. Does the territory covered by these leases owned by the company, include that portion of Osage County, which you tell about, which we term the Osage pool?

A. Yes sir; there is one section, 19, in the Osage pool, on which we have no royalties, the best one there.

Q. How does that happen?

A. Well, there was only one-eighth royalty reserved on that splendid property before the renewal act, and our total royalty was cut down by the renewal act, so it left nothing for us after the Indians' one-eighth.

Q. The Indian nation gets one-eighth of the production?

A. Yes sir.

Q. And then, you get what you can get above that from your subleases?

A. Yes sir. It wouldn't matter to me, if we got royalty from all of it. It is the sublessees which kept the profits from the oil,

not our office. I would rather have a small part of a sublessee's property in the Osage, than any interest in the parent company. Some of our sublessee companies are worth a great deal of money. One, I think, is worth Seven Million Dollars, and they do not pay one-third of the taxes we had assessed against us by the assessment board. That company is the Barnsdale Oil Company; another company is the subsidiary of the Standard Company, namely, the Prairie Oil & Gas Company, and I might mention a number of others.

Q. They operate under subleases from your company?

A. They operate under subleases from our company, which are owned absolutely by them, and are approved by the Secretary separate from us, and they have all the working interest. And
127 their taxes state that they are on their gross receipts, together with taxes on their visible personal property, the same as returned by us, and so, that is the same as it is with all the oil companies in the Cherokee, or in the Osage.

Examination by Mr. Brennan himself:

Q. Did you testify before the Board on a former occasion?

A. Yes sir.

Q. Was there any question about separating the accounts and valuations of the gas business from the oil business?

A. No, but we had no figures before us at that hearing as to the production and receipts from the oil business, and we so told the board, and we were requested and permitted to file statements as to the cost and expense of the production of the oil, and the receipts therefrom, separate and distinct from the cost of the production of the gas and the receipts therefrom, which were subsequently filed, and which I ask the referee and Mr. Reeves, to understand and agree that it is not the tax in this case.

Q. Are you acquainted with the extension of the gas lines, these small surface lines, from the very beginning?

A. Yes.

Q. State what were about the extent of the subleases, held by the different sublessees?

A. They were then, and always have been from three, four, or five miles, to ten, fifteen and twenty miles in extent.

Q. How much does it cost to extend a small line over the surface, a mile, to a producing well, or well to be drilled?

A. About Eleven Hundred Dollars a mile.

Q. Does your company do it in all instances?

A. No. It depended upon the distance and on the agreements between the parties, and as to whether it was feasible or not, to extend a line a certain distance, to assist in the drilling of a well, and a sublessee did not expect it on his part, except as agreed
128 to by the parent company.

Q. Do you have those surface lines over the whole reservation?

A. No, they were extended almost accidentally in the first instance, and from time to time, and the greater part of the produc-

tion now has no surface line; they carry their own operations on with their own gas, or gas from sources other than us.

Q. Did the parent company hold itself out at any time, as being in the business of furnishing gas to sublessees?

A. No.

Q. Is the town of Avant incorporated?

A. No.

Q. Have you any franchise there?

A. No.

Q. Have you any franchise at Bigheart?

A. No.

Q. Is the town of Bigheart incorporated?

A. I think it is, probably, but we have no franchise there.

Q. What is the size of the surface line you refer to?

A. The size of the line I refer to at Eleven Hundred Dollars a mile, was a three inch line.

Q. Is that the line ordinarily used in conveying gas to these operators' wells?

A. Over the surface. These surface lines are not permanent, they are changeable.

Q. How did you happen to put a line into the people living at Avant?

A. By strong pressure from them, and with no promise or agreement on our part to continue the same. The gas business and the oil business, in our office, is kept entirely separate;
129 easily shown and easily ascertained.

Examination by Mr. Reeves:

Q. Are there any of the stockholders of the Indian Territory Illuminating Oil Company, who own stock in these subleases?

A. Yes.

Q. Then you have what is known as an inter-corporate relation existing between the parent company and the lessees?

A. No: They do not follow, from my answer, in the slightest degree?

Q. Who are the stockholders of the Indian Territory Illuminating Oil Company?

A. John H. Brennan, H. V. Foster, M. F. Stillwell, D. Frost, Wisconsin; T. N. Barnsdale, of Pittsburg; Mechanics Savings Bank of Westover, Rhode Island, a bank in liquidation that first put the money into this field, and went into it themselves upon account of it. We carried them two hundred thousand shares out of that litigation in 1902, giving them two hundred thousand shares, and they have had it ever since.

Q. Take the stock of Mr. Barnsdale, for instance, he is also a lessee in the company, is he not?

A. He is, he has got one or two small places and is——

Q. And he is also a stockholder, is he not?

A. In the Barnsdale Oil Company? Yes sir.

Q. Then the stockholders, after all, get the benefit of these subleases?

A. They do not. There is about eighty stockholders. There is a few instances, independent propositions entirely.

Mr. Reeves: I think that is all Mr. Brennan.

Examination by Mr. Brennan:

Q. Do you know about how many of the stockholders of
130 the Indian Territory Illuminating Oil Company, are stockholders in the companies, which are sublessees under that company, or hold individual leases in their own names?

A. Yes sir.

Q. About how many of the total number of stockholders are interested, either as stockholders in the sublessee companies, or hold individual subleases?

A. I should say offhand, about ten.

Examination by Mr. Reeves:

Q. What proportion of the capital stock of the company do these ten control?

A. I couldn't say.

Q. The major portion of it, or less than one-half?

A. I couldn't say that, Mr. Reeves.

Examination by Mr. Brennan himself:

Q. Is it a fact, that any stockholder in any subcompany, ever suggest in the deliberations or business of the Indian Territory Illuminating Oil Company, as controlling or influencing?

A. No. Our business with the Barnsdale Oil Company is at arm's-length, particularly with reference to litigation and all matters and business between us. I don't believe that any lessee gets that. In fact, I know it. I am not only attorney for the company, but have to do with its business, that is one-half of my work, the transaction of its business. A policy of any other kind couldn't be pursued in this case. The property of a stranger might be the most valuable for the parent company to develop.

Q. It is the policy of the parent company to attempt to develop its leases, by subletting it, or by its own operations, in the lines that will increase its revenue?

A. Yes sir. The Indian Territory Illuminating Oil Company has in addition to the subleasing business to which your attention
131 the subleased property, by which the parent company may go on the subleased property, and drill wells and develop the same, giving the well to the sublessee, if it is oil, and reserving it to the parent company if it is gas.

Examination by Mr. Reeves:

Q. You retain the gas secured then?

A. We retain the gas, and our business in that respect during the last two years has resulted in a disastrous loss, drilling ten wells

without getting a foot of gas. We have been unable to pipe gas to Bartlesville, the last ten years, in any very large amount. Mr. Leach can give you the exact description of the gas business, and the depreciation of the wells, even when cased in. The gas depreciates, and is lost by reason of oil operations in the same sand.

Mr. LEACH recalled by the Appellant.

Examination by Mr. Brennan:

Q. When you were on the stand before, in this business, you didn't have before you the figures as to the oil business, and the other business of the company?

A. No sir.

Q. After that, you obtained the same from the books and sent them to the Commission?

A. I did, yes sir.

Q. What would you say as to the value of the Avant plant, as a plant, and the value of the Bigheart plant, as a gas plant?

A. Well, the Avant plant, on account of its character, size of lines, etc., I shouldn't consider to be worth more than, not over Two Thousand Dollars to Twenty-five Hundred Dollars. The Bigheart plant probably might be sold on the market for probably Six

132 Thousand Dollars, not that that would take into account the good will and the business, not the cost, but the cost and the good will of the business, I would say Seven Thousand Dollars at the outside.

The Indian Territory Illuminating Oil Company introduced in evidence the Act of Congress of March 3, 1905, renewing the so called Foster Lease and the Act of Congress of June 28th, 1906, known as the Allotment Bill and the Act of Congress of February 1891 under which the lease was first made as appears from the U. S. Stat. at Large.

Said Appellant also introduced before the Referee the Map now a part of the record in case No. 2845, and being the same map introduced before the State Board of Equalization on June 29, 1911, and referred to as an exhibit in this cause in the record by said Board.

133 *Memorandum of Tax Return for 1911.*

The Indian Territory Illuminating Oil Company returned to the County Assessors a total of \$52,830.02

Divided as follows:

Washington County	\$22,874.00	
Osage County	29,956.02	
	<hr/>	\$52,830.02

In addition to the \$53,835.10

which was returned to the State Auditor,

Divided as follows:

Osage County	\$51,025.10
Washington County	2,810.00
	<hr/> \$53,831.10

Total value of all property as returned.....\$106,665.12

The Indian Territory Illuminating Oil Company also paid gross revenue tax as follows:

Gross Revenue on oil and gas, tax payable quarterly..	\$1,653.68
Yearly gross revenue on gas only, annual tax on pipe line	231.01
	<hr/>

Making a total of.....\$1,855.69

which is in addition to ad valorem taxes above noted as return.

It will be noted that the State levy was 2 mills for 1911 and that the taxes paid by the Indian Territory Illuminating Oil Company as annual gross revenue equals a small fraction over 3 mills on the original cost of the line as appears in the "Record," besides the tax which may be due on advalorem basis and the tax paid by the Indian Territory Illuminating Oil Company on its gas production as gross production tax equals $9\frac{2}{3}$ mills on the original cost of the wells in service as is shown by the "Record" of the cost of these wells in addition to the ad valorem tax to which the wells are subject.

"Exhibit Number 1."

134 *Extract from Annual Return of the Indian Territory Illuminating Oil Co., so Far as Its Business Pertains to Public Service, to the State Auditor of Oklahoma, Showing the Amount of Assessment Rendered, the First Equalization by the State Board, and the Last Equalization, the Latter Amount Being Extended on the Tax Rolls for Osage County, Oklahoma, for the Year 1911.*

Name of township.	School dist.	Amount rendered.	First equalization.	Last equalization ext. tax roll.
Strike Axe (Dist. 12, in Caney Twp.)..	12	4,980.50	104,591.00	49,680.00
Strike Axe	13	6,918.30	145,284.00	69,209.00
Black Dog (should be Bigheart Twp.)	13	900.00	18,900.00	8,977.00
Same	28	14,309.80	300,505.00	142,740.00
Same	29	11,490.00	241,290.00	114,612.00
Town of Bigheart ..	29	3,095.60	650,081.00	308,788.00
Bigheart Twp. (assessed as Black Dog).	43	1,242.00	26,082.00	12,388.00
Same	35	8,088.90	169,864.00	80,565.00
		<hr/>	<hr/>	<hr/>
Totals Osage County.....		51,025.10	1,071,525.00	786,959.00